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THE BASES OF TAXATION.

IN his article on the *Taxation of Labor*, in the POLITICAL SCIENCE QUARTERLY for September, 1886, Dr. Spahr opened his discussion with the declaration that "the system of taxation which the great mass of Americans instinctively accept is this: The equal taxation of all property, the non-taxation of labor."

I do not cite this assertion with a view to confuting it. Whether the acceptance, by Americans generally, of such a principle be instinctive or be merely traditional; whether it be due to a natural feeling of equity, or to a deliberate working out of the question in the national mind, or to mere lack of thinking on the subject, or to defects or vices of political education, or to a conscious purpose of spoliation, or wholly to the force of inherited usage, it is unquestionably true that the American of the period immediately preceding the Civil war did look upon wealth as the proper subject for the imposition of taxes to the full extent, or nearly so, of the needs of government. Dr. Spahr issues from his discussion of the equities of contribution with the conclusion that this view of taxation is the only right and proper one. The tendency which he notes as proceeding rapidly, during the last twenty-six or twenty-seven years, toward the imposition of considerable and still increasing taxes upon the wages of labor (through imposts upon articles of common consumption), he views as the result of political degeneration, or as the effect of the selfish encroachments of capital. It will be my object in this paper, first, to

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examine into the justice of what Dr. Spahr calls the American — or, as he elsewhere terms it, the democratic — principle of taxation; and then to consider the possible bases of taxation, from the point of view of political equity.

Perhaps it will be as well to open the subject at once, without circumlocution, by the peremptory assertion, first, that to lay the entire burdens of government upon property is a policy so inequitable as to become flagrantly iniquitous, and secondly, that the imposition of any tax at all upon property is subject to the gravest impeachment on the ground of right, and is only to be justified, if at all, in a closely limited degree and by virtue of a single consideration, which will be adduced in the further course of this discussion.

But, first, let it be said that this is not a question between the rich and the poor. It would make no difference with the equities of the case if it were. In fact, however, the issue between taxing property and taxing labor is no more an issue between the rich man and the poor man, than between one poor man and another. I have before me, as I write, the valuation and tax-list of a representative New England township, containing, perhaps, twenty square miles; covered with farms whose soil is generally poor, whose surface is generally irregular and largely rocky; having a flourishing manufacturing village at the centre. From this list I select a typical example. C. B. R. is taxed upon 4 horses, 5 cows, one two-year old, 3 yearlings, 3 swine, a house, a barn, a shop, and 72 acres of land. The total assessment is $2,280; and upon this C. B. R. is taxed to the amount, including his poll tax, of $25.94. With such a farm, so stocked, C. B. R. is an exceptionally fortunate New England farmer if the total proceeds of his land, labor, and capital, fairly and fully estimated, reach $800 a year. Yet all around him, on the tax-list, above and below, are the names of manufacturing operatives and mechanics, the least skilled of whom earns two dollars a day, while others receive as much as two and a half and even three dollars, but who, because they have never let their earnings take the form of savings, are only assessed for a poll tax of $2.00 each. Even this small contribution to the

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support of government is not exacted from the mere laborer in most of the American states.

Pursuing this subject, I have analyzed the first 480 names on this tax-list, comprising all the names from A to D inclusive. I find that (*a*) 266 pay only a poll tax; (*b*) 122 are taxed in an amount, including their polls, of less than twenty dollars each; (*c*) 65 are taxed in an amount between $20 and $50; (*d*) 22 pay taxes between $50 and $100; (*e*) 4 pay taxes between $100 and $150; (*f*) one, a successful manufacturer, pays a very large property tax. Now of these 480 persons, only 5 can be called, in any sense, rich; only 27 can be considered well-off or well-to-do. The 187 persons comprising classes *b* and *c* are poor, — as poor, doubtless, on the average, as the 266 forming class *a*. The 122 persons comprising class *b* are on the average distinctly poorer, in the sense of having less freedom of expenditure, than those of the first class; yet they are taxed in amounts two, four, six, eight, or ten times as large as the petty poll tax assessed on the members of that class, and not even then collected save as a condition of voting at elections.

Such facts as those given above are not exceptional. Wherever the principle of a property tax prevails, persons will be found, in great numbers, paying taxes greater, perhaps several times greater, than others whose ability to contribute to the public support is superior to their own. I think I am justified, by such an exhibit, in repeating the assertion that the question of taxes on property or taxes on labor is not an issue between the rich man and the poor man.

The fatal fault in a property tax, that which must cause it to be condemned both ethically and economically, is that it constitutes a penalty upon saving. Whether we assume that revenue as such, the income of the wealthy and well-to-do and the earnings of labor, have first been taxed, or have been allowed to pass free of toll, taxes on property are alike inequitable. If revenue, as such, be taxed, a portion of revenue is by a property tax twice excised: once as earned, and again as saved. If revenue, as such, be not taxed, the injustice becomes far greater, since all the burdens of society are laid upon that portion of revenue

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which is reserved for future use, for provision against old age, for the education of children, for the building up of homes, for the increase of the agencies and instrumentalities available to promote the future production of wealth. If a man's income belongs to him to spend, it belongs to him to save; and, on the ground of equity, the state cannot lay its hands upon that which represents the double virtue of industry and frugality, while sparing that which represents the single virtue of industry. Economically considered, there cannot be a moment's question that the policy of laying the burdens of the state upon that portion of the product of industry which has escaped the maw of appetite, which is presumably reserved for useful employment, which is, in a sense, consecrated by worthy social ambitions, and which represents the courage, prudence and faith requisite to subordinate the present to the future, is thoroughly vicious.

Is any qualification required of the condemnation pronounced upon property taxes, from the point of view of political equity? I answer, there is one consideration, already hinted at, which may be regarded as justifying the imposition of some, not large, part of the burden of supporting government upon the possessors of realized wealth, as such. This is found in the decided probability that some part of the wealth of the rich and some part of the poverty of the poor are due to the state's own negligence or wrong-doing, to its sins of omission or of commission. One cannot doubt that the line between those who have and those who have not, between those who have much and those who have little, is somewhat differently drawn from what it would be but for the laches or the positive acts of government. Government springs from injustice and must, in the nature of the case, perpetrate more or less of injustice. By the unwisdom of its laws, by the incompetence of its executive officers, or through decisions which sacrifice the individual to the supposed general good, some men are made richer and some poorer. It is of the very essence of tariffs, embargoes and wars to enrich the holders of certain kinds of property and correspondingly impoverish others. Delays and failures of criminal justice, the wrongful decisions of judges and juries, the incapacity

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of police and fire departments, the bungling over fraudulent bankruptcies, all these have to do with placing men higher or lower upon the scale of wealth.

Now, so far as the state's own acts have such an effect on the distribution of the product of industry and upon the security of savings, it seems to me not unreasonable that government should take this fact into account in assessing its subjects for compulsory contribution to the treasury. If this view be correct, some part of the taxes of the state may, not inequitably, be levied upon the holders of property, as such. Among the holders of property it will, of course, be impossible to discriminate between those who have received such unearned gains and those who have not; and yet it may be more equitable that the property owners of the community, as a body, should make some contribution to the public funds than that they should not. The range of this consideration, is, however, not very wide, in comparison with the entire field to be covered by taxation. The main reason why one man has and another has not, is still to be found in the energy, prudence, frugality, and temperance of some individuals and the absence of these qualities in others; and so long as this effect is due to such causes, the state cannot, without flagrant wrong, without usurping functions which belong to no human government, make the possession of property the sole or even the chief ground of assessment and compulsory contribution.

In this view of the subject, how can we explain the fact, which Dr. Spahr correctly states, of the almost universal acceptance, by the people of early America, of the policy of the taxation of property? I am disposed to believe that the reason is found in the character and social conditions of our ancestors, by which it came about that accumulated wealth, in those times, bore to revenue or income,[1] in no slight degree, the relation of effect to cause. If I correctly understand Dr. Spahr, he holds that this relationship is universal, declaring that the "property tax is the only just income tax." However that may be, it certainly came very near to being true in early New England and early America. So stalwart was the virtue of those times, so com-

[1] After the deduction of the cost of bare subsistence, as hereinafter explained.

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mon and so strong was the instinct for acquiring property, so large was the return upon capital, and so great was the social importance attached to its possession, that it may almost be said that, barring the effects of intemperance (a failing regarding which the best of our ancestors had too much reason to be tolerant), every able-bodied man, in those days, was willing to work hard that he might earn, and to live frugally, perhaps even painfully, that he might save. Not only was this so in the case of almost every man working for himself, on his own farm or in his own shop, but it was not less distinctly so in the case of hired laborers. A young man, who, "going out to work," even at the very small wages which industrial conditions then allowed to be paid, should not save a considerable proportion of his aggregate wages, against the time when he should marry and undertake the responsibilities of a family, would have been considered, in those times, a very unpromising subject; people would have had their own opinion of him, which would have been that he was not far from a black sheep. In a state of society where frugality thus went hand in hand with industry, and where individual ambition concurred with public sentiment in promoting the accumulation of property on the part of the entire mass of the people, wealth became no bad measure of producing capacity. In such a state of things, indeed, a property tax might have one advantage over a revenue tax, in the matter of political equity; namely, it would afford opportunity for deductions, on account of an unusually large number of children, or protracted illness in the family, or exceptional hard fortune on the part of individuals, for which it is difficult, if not impossible, to make allowance in a proper revenue or income tax.

The simplest statement of the foregoing conditions shows how utterly unfit is a property tax, nowadays, to secure the result of excising incomes, or earnings, with any approach towards justice. In the New England and America of to-day, frugality is not the rule, but the exception. Scarcely one family in two saves to any amount worth speaking of; not one family in five saves as much as it might, or even as much as is

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plainly required by a reasonable regard for the interests of the family; while in the case of unmarried young men saving has very largely gone out of fashion. In a town where many a common laborer is supporting a family on a dollar or a dollar and a quarter a day, many a skilled mechanic, earning two dollars or two dollars and a half, is not three months ahead in the world, if, indeed, failure of employment for a month would not require him to seek credit from the butcher or charity from his fellow-workmen. I do not write in ignorance of the statistics of the savings banks of our country, having frequently had occasion to analyze them. I am well aware of the large amount of saving which actually takes place; yet, in comparison with the ability to save, that amount falls far, very far, short of what was the rule thirty, fifty, and seventy years ago. There is not the same interest in saving on the part of the majority of producers; there is almost infinitely less of a sense of duty regarding saving; there is, practically, no public sentiment whatever operating to induce or enforce saving. Men receiving wages, such as were not dreamed of by their fathers, are content to live in hired houses all their lives, spending a week's wages every week or, at the most, extremely well satisfied with a small savings-bank deposit.

In such a state of things, a property tax ceases to be "the only just income tax"; it fails to be even a tolerably just income tax. To excise realized wealth alone, in such a community, is not merely to encourage extravagance and to discourage frugality; it is a policy fraught with the grossest injustice between man and man. As I said before, if a man's income belongs to him to spend, it equally belongs to him to save. Indeed, one might say not equally but doubly, since saving is itself an act of good citizenship, universally so recognized except only in our tax laws.

If, then, as Dr. Spahr notes with disapprobation, there has been a marked and increasing tendency during the last thirty years, not perhaps to tax property less, but to tax expenditure more, that movement is in the direction of political justice. As before remarked, the question of a property tax does not raise

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an issue wholly between the rich man and the poor man. That issue is equally between one poor man and another. So long as one set of laborers earn twice and even three times as much as the least skilled or capable or fortunate of their own class, and so long as the highest social and industrial interests are involved in the promotion of general frugality among the working people, a property tax, as the sole means of raising the revenue of the state, would be economically injurious and politically unjust.

Dr. Spahr rightly treats the great majority of existing (national) taxes on expenditure, reaching, as they do, articles of ordinary consumption, as a veiled or disguised tax on the wages of labor. Speaking generally,[1] however, these taxes do not, in the United States, reach that portion of wages which represents the bare subsistence of the laborer, since, in spite of nominal import duties on the corresponding foreign products, bread, meat and vegetables are, with us, not excised. That the righteous demand of the state for a contribution out of that portion of the wages of labor which is in excess of bare subsistence[2] should have to be veiled or disguised, by reason of the political cowardice of the age, is properly the subject of deep regret; but the theme is too familiar to justify taking space for it here. Nor is the matter of practical importance, at the present time. Lament, as we will, the lack of political courage on the part of legislators and executives, and the lack of political virtue in the constituencies, which have caused nearly all popular governments to abandon the attempt to levy taxes on the wages of labor, every one must recognize the uselessness of talking about the matter with any view to immediate effect. Whatever we may think worth while to say about it, must be regarded either as a protest, by which we reserve our right to deal with the subject in a better time, or as seed sown for a distant, probably

[1] Our duties on salt, on coal, on cloth, and on materials entering into the construction of houses, are subject to impeachment as taxes upon the absolute necessaries of life.

[2] Mr. David A. Wells, indeed, denounces any degree of exemption from taxation as, in a degree, confiscation. In this, however, Mr. Wells is clearly in error. Economically speaking, it is not possible for the treasury to derive revenue from a laborer who earns only the cost of bare subsistence. If the state takes anything from such a man as a tax-payer, it must, with the other hand, return it to him as a pauper.

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a very distant, harvest: not as when one plants a vine, seeking from it fruit before the next frost, but as when he plants an acorn, in the expectation of an oak. For one, I do not deem it unreasonable to look forward to the time when, through the thorough instruction of our children in civics, ethics and economics, and through the long continued enjoyment of political franchises, governments shall be found, immediately subject to popular control, which shall yet be able to collect by direct assessment and exaction that tenth or that fifth part of the laborer's wages which is now conveyed away from him by disguised imposts upon the decencies, comforts and luxuries of life.

We have now reached a point in our discussion where we are called upon to deal with a very pretentious and not unplausible theory of taxation, which, though far from new, being, indeed, one of the oldest in economic literature, has come largely into vogue during the present generation, — the theory, namely, which regards taxes on expenditure, not as a device, legitimate, perhaps, under the circumstances, for reaching revenues which the state lacks the courage or the skill to touch directly, but as the sole, proper, and equitable form of public contribution. Sir William Petty wrote, two hundred years ago:

> It is generally allowed by all that men should contribute to the public charge, but according to the share and interest they have in the public peace, that is, according to their estates or riches. Now, there are two sorts of riches, one actual and the other potential. A man is actually and truly rich according to what he eateth, drinketh, weareth, or in any other way actually enjoyeth. Others are but potentially and imaginatively rich, who, though they have power over much, make little use of it, *these being rather stewards and exchangers for the other sort, than owners for themselves*. Concluding, therefore, that every man ought to contribute according to what he taketh to himself and actually enjoyeth, the first thing to be done [*etc.*].

The same view of public contribution was a favorite one with Arthur Young, a century later. In writing of Holland and Zealand, he says:

> Nor do they tax according to what men gain, but [*i.e.* except] in extraordinary cases; but always according to what men spend.

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At various points in his writings the same suggestion occurs; and in his *Travels in France*, he undertakes the formal statement of this doctrine of taxation. After stating that it is

> absolutely necessary that every individual in the society contribute to the wants of the state in proportion to his ability, provided such contribution does not impede the progress of his industry,

he adds:

> By ability must not be understood either capital or income, but that super-lucration, as Davenant[1] called it, which melts into consumption. . . . If a landlord farm his own estate and expend the income on improvements, living on but a small portion of the profits, it is sufficiently clear that the taxes ought not to affect one shilling of the expenditure on his land. They can reach, with propriety, the expenses of his living only. If they touch any other part of his expenditure, they deprive him of *those tools that are working the business of the state.*

He concludes:

> A man paying, therefore, "according to his ability," must be understood in a restrained sense.

One of the best modern statements of this theory is in a pamphlet from the pen of Mr. William Minot, Jr., of Boston. Mr. Minot issues with the conclusion that:

> Every man ought to be taxed on all that property which he consumes or appropriates to his exclusive use.

The doctrine that taxes on expenditure, or consumption, constitute the only just form of public contribution, is liable to three grave objections.

(1) The underlying notion that wealth can, with justice, be taxed only as it passes into consumption, inasmuch as only then does it become the subject of a selfish or exclusive appropriation, involves a misconception of the reason which exists for imposing any taxes at all. If the personal consumption of wealth were the most unselfish act conceivable, if men ate, drank, and wore clothes only from the sternest sense of duty,

[1] This is Dr. Charles Davenant, an eminent writer on finance and political arithmetic, between 1695 and 1712.

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the right of the state to a contribution from a mass of wealth so disposed of would be no less and no other than it is when that mass of wealth is contemplated as consumed for the indulgence of appetite and as a means to pleasure. If the aggregate annual revenue of a community is one thousand millions of dollars, and the state has need of one hundred millions for its purposes, the smaller revenue should come out of the larger, on grounds alike of equity and of economics. I do not say that every one thousand dollars of private revenue should yield one hundred dollars of public revenue: that is a distinct and subsequent question. The state must, as we have seen, exempt the cost of bare subsistence, a thing which, of itself, destroys the strict proportionality of contribution. The state may even, it is held by many publicists of reputation, without injustice introduce, in some measure, the principle of progression into taxation, assuming that the ability to contribute to the public support increases somewhat more rapidly than does the wealth in individual possession. This is a question far too large to be entered upon here. Again, the state may, from considerations of economic expediency, seek to promote the application of revenue to productive uses by diminishing somewhat the burden upon the portion of revenue so reserved. But I confess that I see no ground for the assumption that the state has no rights of revenue whatsoever over that portion of the annual product which the individual does not choose to apply to personal expenditure. Subject to at least one, and perhaps more, of the three qualifications noted, the revenue of the government should be contemplated as drawn from the revenue of the community; and, subject to the exceptions noted, the revenue rights of the state attach equally to every portion of private revenue, irrespective of the consideration whether any such portion is to be spent or to be saved.

(2) But, again, the assumption that wealth is only selfishly appropriated or individually enjoyed when it is consumed, seems to me altogether unwarranted. The fact is, the selfish and exclusive enjoyment of wealth, in some degree, is inseparable from its possession. The pride of ownership, the social

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distinction which attends wealth, the power it confers, are additional to the merely sensual pleasure derived from the expenditure of a portion of the revenue from a rapidly accumulating property. Do I resent the interference of the government, or of my neighbors, in the management of my property? What is this but proof of a personal appropriation, an exclusive appropriation, of that wealth? My resentment springs out of the deep feeling that the management of my own property is my right; and that he who deprives me of it robs me of what is as truly mine as the right to eat, drink, wear, or otherwise consume or enjoy any portion of it; that, short of mental incapacity, it is my privilege to control my own estate, even though not to the highest advantage of the community or of myself. In other words, I feel and know that I am not a trustee but a proprietor; not a "steward or exchanger for others," but an owner for myself.

(3) If wealth not devoted to personal expenditure is to be exempt from taxation on the ground that it is to be used for the public good, it unmistakably is the right, and it might even become the duty, of the state, to see to it that such wealth is, in fact, in all respects and at all times put to the best possible use. Indeed, if any citizen protests against taxation on the ground that his tools "are working the business of the state," — how can the state, without injustice to all other citizens, excuse him from contribution without requiring that he shall exhibit satisfactory evidence, not only that his tools are really working its business, but that they are doing this in the most thorough, efficient and economical manner? If this is not socialism of the rankest sort, I should be troubled to define socialism.

Nay, if the citizen is to be exempted from contribution on the ground that he is, in respect to all the wealth which he does not personally consume, only a trustee, merely a steward for others, then society may, without wrong, carry away all the property which is in excess of what would be necessary to support his actual expenditure; the real beneficiary may at any time enter and dispossess the trustee, if any substantial reason

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exists for dissatisfaction as to the management of the property, or, indeed, for that matter, merely because it chooses to do so; the state may take the tools into its own hands and "work its business" for itself.

The frightfully socialistic character of this doctrine of taxation has always made it, to me, a matter of amazement that it should be held by some who have openly and strenuously advocated it. Anything more dangerous, in the present state of public opinion, it would be difficult to conceive. I trust I have shown that it is, also, without foundation either in equity or in economics.

But, while we thus dismiss expenditure as the theoretical basis of taxation, we have to admit that, in a degree, and in an increasing degree, it becomes a useful agency in reaching[1] those revenues which the state, either from political cowardice or because of the opportunities which exist on every side for concealment or evasion, cannot, or will not, reach. Dr. Spahr is probably right in his conclusion that the existing body of national taxes rests with disproportionate weight upon the poorer classes of the country; but I am disposed to question whether that result is properly attributable to the encroachments of capital, in its own behalf. The taxes on salt, on coal, on clothing and on the materials entering into the construction of dwellings, while they violate the very first rule of justice and economics by enhancing the necessary cost of subsistence, are imposed as an integral part of a protective system which I, for one, though a free-trader, believe to have been established[2] honestly, however mistakenly, in the interest of the working classes. With much more confidence can it be claimed that the taxes on the decencies, comforts and luxuries of life, under our present tariff, were genuinely intended to preserve the wages of American labor from a dangerous competition with the "pauper labor of

[1] As in the case of progressive taxation, on a previous page, I here pass by a nice and difficult question in taxation; namely, the ultimate incidence of taxes on consumption. It is not from an indisposition to meet the issue, but from want of space, that I omit all discussion of this question.

[2] This, while fully recognizing that our successive tariffs have been largely *shaped* by class or sectional interests, with an obtrusion, at times, of mean motives which were simply disgusting, as in the Tariff of Abominations, 1828.

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Europe." If, then, our national taxes on expenditure press with undue weight on our laboring classes, this is not to be charged to conscious and purposed encroachments of capital. It is, rather, the price which the working classes have themselves chosen to pay for securing the promised blessings of protection.

We have thus far spoken, in succession, of three possible bases of taxation: (1) property or capital or realized wealth; (2) revenue or income; (3) consumption or expenditure. There remains but one other[1] possible basis of taxation, namely, *faculty*, or native or acquired power of production. We shall readily find a faculty tax to be the most equitable form of public contribution, if we compare it with the revenue tax. We saw that, as between two persons acquiring equal revenues, a property tax lays the burdens of government upon that one who exhibits the virtue of frugality in addition to the virtue of industry, thus grossly violating the principles of equity. We are now to see that even the revenue tax works injustice, though in a lower degree than the property tax; since, as between two men of equal natural powers, the revenue tax lays the heavier burden upon him who most fully and diligently uses his abilities and opportunities. It even accepts indolence, shiftlessness, and worthlessness as a sufficient ground for excuse from public contribution.

Here are two men of equal natural powers. One is active, energetic, industrious. Toiling early and late, he realizes a considerable revenue, on a portion of which the state lays its

[1] It may be asked: What of *land?* What of rent-bearing land? I answer, first, a tax on all lands is primarily a tax on produce, and, in its results, becomes an addition to the cost of subsistence. Secondly, the assumption, or usurpation, as we may choose to regard it, by the state of a part or the whole of economic rent, — the "unearned increment of land," to use Mr. Mill's phrase, — does not appear to me strictly a form of taxation, but rather one of the lucrative prerogatives of the state, the natural proprietor of all lands. I think Mr. Mill is right in saying that "it is the same thing as being untaxed to pay to the state only what would have been paid to private landlords, if the land were appropriated." I attach the name of Mr. Mill to this doctrine, and not that of Mr. Henry George, because, in the latter's proposals regarding land, there is not one original feature except only the rascally suggestion that the value of the land, at the time such a public policy should go into effect, be appropriated by the state without compensation to existing owners.

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hands. The other lets his powers run to waste; trifles with life, shirks duty; wrongs his family and the community by living squalidly and meanly. Producing no more than is necessary to subsistence, he would, under a pure revenue tax, escape contribution altogether. Yet his duty to contribute to the state is not less clear in kind, or lower in degree, than that of the other. His social and industrial delinquency, so far from excusing him from any portion of his obligation, would, the rather, justify heavier burdens being laid upon him, in compensation for the injury which his ill example and evil behavior have inflicted upon the community.

We must, I think, conclude that, while to tax wealth instead of revenue is to put a premium upon self-indulgence in the form of expenditure for present enjoyment, to tax revenue instead of faculty is to put a premium upon self-indulgence in the form of indolence, the waste of opportunities, the abuse of natural powers; and that a faculty tax constitutes the only theoretically just form of taxation, men being required to serve the state in the degree in which they have ability to serve themselves. This is the form of contribution to which all primitive communities instinctively resort. It is the tax which, but for purely practical difficulties, would at all times and in all places afford a perfectly satisfactory measure of the obligation of every citizen to contribute to the support or defence of his government. Any mode of taxation which departs in essence from this, involves a greater or smaller sacrifice of the equities of contribution; and every mode of taxation, which departs from this in form, is almost certain to involve a greater or smaller departure in essence.

It seems to me that the economists and financiers make a serious mistake when they drop faculty as the theoretical basis of taxation. It is true that in a state of highly complicated interests and industries, a faculty tax is no longer practicable[1] as a sole or chief form of contribution; but this constitutes no

[1] The greatest tax of modern times, the requirement of compulsory military service, throughout all the nations of continental Europe, is, however, still assessed and collected essentially on this basis.

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reason why it should not be held in view, as furnishing the line from which to measure all departures from the equities of contribution, as one or another form of taxation, more suited to the exigencies of modern society, comes to be adopted for meeting the wants of government.

FRANCIS A. WALKER.

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THE EARLY PROTECTIVE MOVEMENT AND THE TARIFF OF 1828.

THE protective movement in this country has been said to date from the year 1789, even from before 1789; and more frequently it has been said to begin with the tariff act of 1816. But whatever may have been, in earlier years, the utterances of individual public men or the occasional drift of an uncertain public opinion, no strong popular movement for protection can be traced before the crisis of 1818–19. After that crisis such a movement set in, of which the causes are not far to seek. On the one hand there was a great collapse in the prices of land and of agricultural products, which had been much inflated during the years from 1815 to 1818. At the same time the foreign market for grain and provisions, which had been highly profitable during the time of the Napoleonic wars, and which there had been a spasmodic attempt to regain for two or three years after the close of our war in 1815, was lost almost entirely. On the other hand, a large number of manufacturing industries had grown up, still in the early stages of development, and still beset with difficulties, yet likely in the end to hold their own and to prosper. That disposition to seek a remedy from legislation, which always shows itself after an industrial crisis, now led the farmers to ask for a home market, while the manufacturers wanted protection for young industries. The distress that followed the crash brought out a plentiful crop of pamphlets in favor of protection, of societies and conventions for the promotion of domestic industry, of petitions and memorials to Congress for higher duties. The movement undoubtedly had deep root in the feelings and convictions of the people, and the powerful hold which protective ideas then obtained influenced the policy of the nation long after the immediate effects of the crisis had ceased to be felt.[1]

[1] The character of the protective movement after 1819 is best illustrated by the numerous pamphlets of Matthew Carey; see especially his Appeal to Common

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The first effect of this movement was seen in a series of measures which were proposed and earnestly pushed in Congress in the session of 1819–20. They included a bill for a general increase of duties, one for shortening credits on duties, and one for taxing sales by auction of imported goods. The first of these very nearly took an important place in our history. It was passed by the House, and failed to pass the Senate by but a single vote. Although it failed to become law, the protective movement which was expressed in the votes and speeches on it, remained unchanged for several years, and brought about the act of 1824, while making possible the act of 1828. Some understanding of the state of feeling in the different sections of the country is necessary before the peculiar events of 1828 can be made clear, and it may conveniently be reached at this point.

The stronghold of the protective movement was in the Middle and Western states of those days, in New York, New Jersey, Pennsylvania, Ohio, and Kentucky. They were the great agricultural states; they felt most keenly the loss of the foreign market of the early years of the century, and were appealed to most directly by the cry for a home market. At the same time they had been most deeply involved in the inflation of the years 1816–19, and were in that condition of general distress and confusion which leads people to look for some panacea. The idea of protection as a cure for their troubles had obtained a strong hold on their minds. It is not surprising, when we consider the impetuous character of the element in American democracy

Sense and Common Justice (1822), and The Crisis: A Solemn Appeal, *etc.* (1823). Niles's Register, which had said little about tariff before 1819, thereafter became a tireless and effective advocate of protection.

The tariff act of 1816, which is generally said to mark the beginning of a distinctly protective policy in this country, has always seemed to me to belong rather to the earlier series of acts, beginning with that of 1789, than to the group of acts of 1824, 1828, and 1832. Its highest permanent rate of duty was 20 per cent, an increase over the previous rates which is chiefly accounted for by the heavy interest charge on the debt incurred during the war. The most significant circumstance, however, is the absence in 1816 of that strong popular feeling which we find in 1819, and which led to the passage of the acts of 1824 and 1828.

I have said little in the following pages on the economic effect of the protective legislation of the period under consideration. Something on this subject may be found in my essay on Protection to Young Industries in the United States.

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at that time represented by them, that the idea was applied in a sweeping and indiscriminate manner. They wanted protection not only for the manufactures that were to bring them a home market, but for many of their own products, such as wool, hemp, flax, even for wheat and corn. For the two last mentioned they asked aid more particularly in the form of higher duties on rum and brandy, which were supposed to compete with spirits distilled from home-grown grain. A duty on molasses was a natural supplement to that on rum. Iron was already produced to a considerable extent in Pennsylvania and New Jersey, and for that also protection was asked.

In New England there was a strong opposition to many of these demands. The business community of New England was still made up mainly of importers and dealers in foreign goods, shipping merchants, and vessel-owners. They naturally looked with aversion at measures that tended to lessen the volume of foreign trade. Moreover, they had special objections to many of the duties asked for by the agricultural states. Wool was the raw material of a rapidly growing manufacture. Hemp in the form of cordage, flax in the form of sail-duck, and iron, were important items in the cost of building and equipping ships. The duties on molasses and rum were aimed at an industry carried on almost exclusively in New England: the importation of molasses from the West Indies in exchange for fish, provisions, and lumber, and its subsequent manufacture into rum. So far the circumstances led to opposition to the protective movement. On the other hand, the manufacture of cotton and woollen goods was increasing rapidly and steadily, and was the moving force of a current in favor of protection that became stronger year by year. The beginning of New England's manufacturing career dates back to the war of 1812. Before 1820 she was fairly launched on it, and between 1820 and 1830 she made enormous advances. The manufacturers carried on a conflict, unequal at first, but rapidly becoming less unequal, with the merchants and ship-owners. As early as 1820 Connecticut and Rhode Island were pretty firmly protective. Massachusetts hesitated. Under the first weight of the crisis

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of 1819, the protective feeling was strong enough to cause a majority of her congressmen to vote for the bill of 1820. But there was great opposition to that bill, and after 1820 the protective feeling died down.[1] In 1824 Massachusetts was still disinclined to adopt the protective system. It was not until the end of the decade that she came squarely in line with the agricultural states on that subject.

The South took its stand against the protective system with a promptness and decision characteristic of the political history of the slave states. The opposition of the Southern members to the tariff bill of 1820 is significant of the change in the nature of the protective movement between 1816 and 1820. The Southern leaders had advocated the passage of the act of 1816; but bitterly opposed the bill of 1820. It is possible that the Missouri Compromise struggle had opened their eyes to the connection between slavery and free trade.[2] At all events, they had grasped the fact that slavery made the growth of manufactures in the South impossible, that manufactured goods must be bought in Europe or in the North, and that, wherever bought, a protective tariff would tend to make them dearer. Moreover, Cotton was not yet King, and the South was not sure that its staple was indispensable for all the world. While the export of cotton on a large scale had begun, it was feared that England, in retaliation for high duties on English goods, might tax or exclude American cotton.

Such was in 1820 the feeling in regard to the protective system in the different parts of the country. After the failure of the bill of that year, the movement for higher duties seems for a while to have lost headway. The lowest point of industrial and commercial depression, so far as indicated by the

[1] The vote on the bill of 1820, by states, is given in Niles XVIII, 169. Of the Massachusetts members 10 voted yes, 6 no, and 4 were absent. Of the New England members 19 voted yes, 14 no, and 8 were absent. The opposition to the bill in Massachusetts was the occasion of a meeting at which Webster made his first speech on the tariff. It is not reprinted in his works, but may be found in the newspapers of the day.

[2] But no reference was made to the Missouri struggle in the debates on the tariff bill of 1820.

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revenue, was reached at the close of 1820. As affairs began to mend, protective measures received less vigorous support. Bills to increase duties, similar to the bill of 1820, were introduced in Congress in 1821 and 1822, but they were not pressed and led to no legislation.[1]

Public opinion in most of the Northern states, however, continued to favor protection; the more so because, after the first shock of the crisis of 1819 was over, recovery, though steady, was slow. As a presidential election approached and caused public men to respond more readily to popular feeling, the protectionists gained a decided victory. The tariff of 1824 was passed, the first and the most direct fruit of the early protective movement. The presidential election of that year undoubtedly had an effect in causing its passage; but the influence of politics and political ambition was in this case hardly a harmful one. Not only Clay, the sponsor of the American System, but Adams, Crawford, and Jackson, were declared advocates of protection. Partly lines, so far as they existed at all, were not regarded in the vote on the tariff. It was carried mainly by the votes of the Western and Middle states. The South was in opposition; New England was divided: Rhode Island and Connecticut voted for the bill, Massachusetts and other New England states were decidedly opposed.[2]

The opposition of Massachusetts was the natural result of the character of the new tariff. The most important changes made by it were in the increased duties on iron, lead, wool, hemp, cotton-bagging, and other articles whose protection was desired chiefly by the Middle and Western states. The duties on

[1] See the interesting account of a Cabinet meeting in November, 1821, in J. Q. Adams's Memoirs, vol. v, pp. 408–411. "The lowest point of the depression was reached at the close of last year" [1820]. Calhoun thought "the prosperity of the manufacturers was now so clearly established that it might be mentioned in the message as a subject for congratulation." Crawford said "there would not be much trouble in the ensuing session with the manufacturing interest"; and Adams himself "had no apprehension that there would be much debate on manufacturing interests."

[2] John Randolph said, in his vigorous fashion, of the tariff bill of 1824: "The merchants and manufacturers of Massachusetts and New Hampshire repel this bill, while men in hunting shirts, with deerskin leggings and moccasins on their feet, want protection for home manufactures." Debates of Congress, 1824, p. 2370.

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textile fabrics, it is true, were also raised. Those on cotton and woollen goods went up from 25 to 33⅓ per cent. This increase, however, was offset, so far as woollens were concerned, by the imposition of a duty of 30 per cent on wool, which had before been admitted at 15 per cent. The manufacturers of woollen goods were, therefore, as far as the tariff was concerned, in about the same position as before.[1] The heavier duties on iron and hemp, on the other hand, were injurious to the ship-builders.

The manufacture of textiles was rapidly extending in all the New England states. At first that of cottons received most attention, and played the most important part in the protective controversy. But by 1824 the cotton industry was firmly established and almost independent of support by duties. The woollen manufacture was in a less firm position, and in 1824 became the prominent candidate for protection. Between 1824 and 1828 a strong movement set in for higher duties on woollens, which led eventually to some of the most striking features of the tariff act of 1828.

The duties proposed and finally established on woollens were modelled on the minimum duty of 1816 on cottons. By the tariff act of that year, cotton goods were made subject to a general *ad valorem* duty of 25 per cent; but it was further provided that "all cotton cloths, whose value shall be less than 25 cents per square yard, shall be taken and deemed to have cost 25 cents per square yard, and shall be charged with duty accordingly."[2] That is, a specific duty of six and a quarter

[1] This can be shown very easily. The cost of the wool is about one-half the cost of making woollen goods. Then we have in 1816:

Duty on woollens	25 per cent.
Deduct duty on wool, ½ of 15 per cent	7½ "
Net protection in 1816	17½ "

And in 1824 we have:

Duty on woollens	33⅓ per cent.
Deduct duty on wool, ½ of 30 per cent	15 "
Net protection in 1824	18⅓ "

[2] The minimum system was probably suggested in 1816 by Francis C. Lowell, who had just put the power loom in successful operation in weaving cottons, and

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cents a square yard was imposed on all cotton cloths costing 25 cents a square yard or less. Similar duties were imposed on cotton yarns. The minimum duties were originally intended to affect chiefly East Indian goods and goods made from East Indian cotton, and it was the fear of competition from Eastern cotton that made the Southern members willing to accept them. Practically, they operated mainly on goods from England, whether made of American or of Indian cotton. In a few years, as the use of the power loom and other improvements in manufacture brought the price of coarse cottons much below 25 cents, the minimum duties became prohibitory. How far these duties were effectual in promoting the success and prosperity of the cotton manufacture in years following their imposition, was hotly discussed at the time, and perhaps affords room for discussion now.[1] At all events, whether or not in consequence of the duties, the manufacture of cotton goods was strikingly prosperous. Large profits were made by those who entered on it; and in a few years the cheaper grades of cotton cloth were produced so cheaply, and of such good quality, that the manufacturers freely asserted that the duty had become nominal, and that foreign competition no longer was feared.

This example had its effect on the manufacturers of woollen goods, and on the advocates of protection in general. In the tariff bill of 1820, minimum duties on linens and on other goods had been proposed. In 1824 an earnest effort was made to extend the minimum system to woollens. The committee which reported the tariff bill of that year recommended the adoption in regard to woollens of a proviso framed after that of the tariff of 1816 in regard to cottons. The minimum valuation was put at 80 cents a yard. The House first lowered the valuation point to 40 cents and finally struck out the whole proviso, by a scant majority of three votes.[2] There was one great obstacle

had thereby put the manufacture on a firm foundation; see Appleton, On the Power Loom and the Origin of Lowell, p. 13. *Cf.* Appleton's speech in Congress in 1833, Congressional Debates, IX, 1213.

[1] Taussig, Protection to Young Industries, part iii.

[2] The vote was 104 to 101; Annals of Congress, 1823–4, p. 2310.

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in the way of a high duty on cheap woollen goods. They were imported largely for the use of slaves on Southern plantations. Tender treatment of the peculiar institution had begun already, and there was strong opposition to a duty which had the appearance of being aimed against the slave-holders. The application of the minimum principle to other than cheap woollen goods apparently had not yet been thought of; but the idea was obvious, and soon was brought forward.

After 1824 there was another lull in the agitation for protection. Trade was buoyant in 1825, and production profitable. For the first time since 1818 there was a swing in business operations. This seems to have been particularly the case with the woollen manufacturers. During the years from 1815 to 1818–19, they, like other manufacturers, had met with great difficulties; and when the first shock of the crisis of the latter year was over, matters began to mend but slowly. About 1825, however, according to the accounts both of their friends and of their opponents on the tariff question, they extended their operations largely.[1] It is clear that this expansion, such as it was, was not the effect of any stimulus given by the tariff of 1824; for, as we have seen, the encouragement given the woollen manufacturers by that act was no greater than had been given under the act of 1816. At all events, the upward movement lasted but a short time. In England a similar movement had been carried to the extreme of speculation and had resulted in the crisis of 1825–6. From England the panic was communicated to the United States; but, as the speculative movement had not been carried so far in this country, the revulsion was less severely felt. It seems, however, to have fallen on the woollen manufacturers with peculiar weight. Parliament, it so happened, in 1824 had abolished almost entirely the duty on wool imported into England. It went down from twelve pence to one penny a pound.[2] The imports of woollen goods into the

[1] See the Report of the Harrisburg Convention of 1827, in Niles, XXXIII, 109; Tibbits, Essay *etc.* on Home Market (1827), pp. 26, 27; Henry Lee, Boston Report of 1827, pp. 64 *seq.*

[2] It is sometimes said that this reduction of the wool duty in England was under-

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United States had in 1825 been unusually large; the markets were well stocked; the English manufacturers were at once enabled to sell cheaply by the lower price of their raw material, and pushed to do so by the depression of trade.

A vigorous effort was now made to secure legislative aid to the woollen makers, similar to that given the cotton manufacturers. Massachusetts was the chief seat of the woollen industry. The woollen manufacturers held meetings in Boston and united for common action, and it was determined to ask Congress to extend the minimum system to woollen goods.[1] The legislature of the state passed resolutions asking for further protection for woollens, and these resolutions were presented in the federal House of Representatives by Webster.[2] A deputation of manufacturers was sent to Washington to present the case to the committee on manufactures. Their efforts promised to be successful. When Congress met for the session of 1826–7, the committee (which in those days had charge of tariff legislation) reported a bill which gave the manufacturers all they asked for.

This measure contained the provisions which, when finally put in force in the tariff of 1828, became the object of the most violent attack by the opponents of protection. It left the nominal rate of duty unchanged; this was to remain, as before, at 33⅓ per cent. But minimum valuations were added, on the plan of the minima on cottons, in such a way as to carry the actual duty far beyond the point indicated by the nominal rate. The bill provided that all goods costing less than 40 cents a square yard were to pay duty as if they had cost 40 cents; all

taken with the express purpose of counteracting the protective duties imposed on woollens in the United States. But there is little ground for supposing that our duties were watched so vigilantly in England, or were the chief occasion for English legislation. The agitation for getting rid of the restriction on the import and export of wool began as early as 1819, and during its course very little, if any, reference was made to the American duties. See the sketch in Bischoff, History of the Woollen and Worsted Manufactures, vol. ii, chapters 1 and 2.

[1] The memorial of the manufacturers to Congress is in Niles, XXXI, 185. It asks for minimum duties on the ground that *ad valorem* duties are fraudulently evaded. For the circular sent out by this committee, see *ibid.*, p. 200.

[2] American State Papers, Finance, V, 599; Annals of Congress, 1826–7, p. 1010.

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costing more than 40 cents and less than $2.50 were to be charged as if they had cost $2.50; all costing between $2.50 and $4.00 to be charged as if they had cost $4.00. A similar course was proposed in regard to raw wool. The *ad valorem* rate on raw wool was to be 30 per cent in the first place, and to rise by steps to 40 per cent. It was to be charged on all wool costing between 16 cents and 40 cents a pound as if the wool had cost 40 cents. The effect of this somewhat complicated machinery was evidently that of levying specific duties both on wool and on woollens. On wool the duty was to be, eventually, 16 cents a pound. On woollens it was to be $13\frac{1}{3}$ cents a yard on woollens of the first class, $83\frac{1}{3}$ cents on those of the second class, and $\$1.33\frac{1}{3}$ on those of the third class.

The minimum system, applied in this way, imposed *ad valorem* duties in form, specific duties in fact. It had some of the disadvantages of both systems. It offered temptations to fraudulent undervaluation stronger than those offered by *ad valorem* duties. For example, under the bill of 1827, the duty on goods worth in the neighborhood of 40 cents a yard would be $13\frac{1}{3}$ cents if the value was less than 40 cents; but if the value was more than 40 cents, the duty would be $83\frac{1}{3}$ cents. If the value could be made to appear less than 40 cents, the importer saved 70 cents a yard in duties. Similarly, at the next step in the minimum points, the duty was $83\frac{1}{3}$ cents if the goods were worth less than $2.50, and $\$1.33\frac{1}{3}$ if the goods were worth more than $2.50. The temptation to undervalue was obviously very strong under such a system, in the case of all goods which could be brought with any plausibility near one of the minimum points. On the other hand, the system had the want of elasticity which goes with specific duties. All goods costing between 40 cents and $2.50 were charged with the same duty; so that the cheaper goods were taxed at a higher rate than the dearer goods. The great gap between the first and second minimum points (40 cents and $2.50) made this objection the stronger. But that gap was not the result of accident. It was intended to bring about a very heavy duty on goods of the grade chiefly manufactured in this country. The

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most important domestic goods were worth about a dollar a yard, and their makers, under this bill, would get a protective duty of 83⅓ cents a yard. The object was to secure a very high duty, while retaining nominally the existing rate of 33⅓ per cent.

The woollens bill of 1827 had a fate similar to that of the general tariff bill of 1820. It was passed in the House, but was lost in the Senate by the casting vote of the Vice-President. In the House the Massachusetts members, with one exception, voted for it, and both Senators from Massachusetts supported it.[1]

This bill having failed, the advocates of protection determined to continue their agitation, and to give it wider scope. A national convention of protectionists was determined on. It is not very clear in what quarter the scheme of holding such a convention had its origin. The first public suggestion came from the Philadelphia Society for the Promotion of Domestic Industry, an association founded by Hamilton, of which Matthew Carey and C. J. Ingersoll were at this time the leading spirits. Once suggested, the idea met with general approval. Meetings were held in the different states in which the protective policy was popular, and delegates were appointed to a general convention. In midsummer of 1827 about a hundred persons assembled at Harrisburg, and held the Harrisburg convention, well known in its day. Most of the delegates were manufacturers, some were newspaper editors and pamphleteers, a few were politicians.[2]

The Harrisburg convention did not confine its attention to wool and woollens. It considered all the industries which were supposed to need protection. It recommended higher duties for the aid of agriculture; others on manufactures of cotton, hemp, flax, iron, and glass; and finally new duties on wool and woollens. The movement was primarily for the aid of the

[1] Congressional Debates, III, 1099, 496.

[2] Among the politicians was Mallary of Vermont, who had been chairman of the committee on manufactures in the preceding Congress, and became the spokesman of the protectionists in the ensuing session, when the tariff of 1828 was passed.

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woollen industry; other interests were included in it as a means of gaining strength. The duties which were demanded on woollens were on the same plan as those proposed in the bill of 1827, differing only in that they were higher. The *ad valorem* rate on woollen goods was to be 40 per cent in the first place, and was to be raised gradually until it reached 50 per cent. It was to be assessed on minimum valuations of 50 cents, $2.50, $4.00, and $6.00 a yard. The duty on wool was to be 20 cents a pound in the first instance, and was to be raised each year by two and one-half cents, until it should reach 50 cents a pound. Needless to say, the duty would be prohibitory long before this limit was reached. Wool costing less than eight cents was to be admitted free.[1]

At this point a new factor, which we may call "politics," began to make itself felt in the protective movement. The natural pressure of public opinion on public men had exercised its effect in previous years, and had had its share in bringing about the tariff act of 1824 and the woollens bill of 1827. But the gradual crystallization of two parties, the Adams and Jackson parties, — Whigs and Democrats, as they soon came to be called, — put a new face on the political situation, and had an unexpected effect on tariff legislation. The contest between them had begun in earnest before the Harrisburg convention met, and some of the Jackson men alleged that the convention was no more than a demonstration got up by the Adams men as a means of bringing the protective movement to bear in their aid. This was denied, and such evidence as we have seems to support the denial.[2] Yet the Adams men were undoubtedly

[1] The proceedings of the convention, the address to the people, the memorial to Congress, *etc.*, are in Niles, XXXII and XXXIII.

[2] I have been able to find little direct evidence as to the political bearing of the Harrisburg convention. Matthew Carey, in a letter of July, 1827, while admitting he is an Adams man, protests against "amalgamating the question of the presidency with that for the protection of manufactures"; Niles, XXXII, 389. *The* (New York) *Evening Post*, a Jackson paper, said the convention was a manœuvre of the Adams men; see its issues of Aug. 1 and Aug. 9, 1827. This was denied in *The National Intelligencer* (Adams) of July 9, and also in *The* (New York) *American* (Adams) of July 9. *The Evening Post* admitted (Aug. 11) that "doubtless many members of the convention were innocent of political views" and that "the rest were

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helped by the protective movement. It is true that there was not then, nor was there for a number of years after, a clear-cut division on party lines between protectionists and so-called free traders. But the Adams men were more firmly and unitedly in favor of protection than their opponents. Adams was a protectionist, though not an extreme one; Clay, the leader and spokesman of the party, was more than any other public man identified with the American System. They were at least willing that the protective question should be brought into the foreground of the political contest.[1]

The position of the Jackson men, on the other hand, was a very difficult one. Their party had at this time no settled policy on the questions which were to be the subjects of the political struggles of the next twenty years. They were united on only one point, a determination to oust the other side. On the tariff, as well as on the Bank and internal improvements, the various elements of the party held very different opinions. The Southern members, who were almost to a man supporters of Jackson, were opposed unconditionally not only to an increase of duties, but to the high range which the tariff had already reached. They were convinced, and in the main justly convinced, that the taxes levied by the tariff fell with peculiar weight on the slave states; and their opposition was already

induced to postpone or abandon their political views." Van Buren apparently suspected that the convention might have a political meaning, and warned its members against forming "a political cabal"; *cf.* *The National Intelligencer* of July 26. But among the delegates from New York were both Jackson and Adams men. See Hammond, Political History of New York, II, 256–258; Niles, XXXII, 349. Niles, who was an active member of the convention, denied strenuously that politics had anything to do with it; Niles, XXXIV, 187.

[1] There is ground for suspecting that the Adams party would have been willing to make the tariff question the decisive issue of the presidential campaign. Clay made it the burden of his speeches during his journey to the West in the early summer of 1827. Very soon after this, however, the correspondence between Jackson and Carter Beverly was published, and fixed attention on the "bargain and corruption" cry. That was the point which the Jackson managers succeeded in making most prominent in the campaign. Clay dropped the question of protection; he found enough to do in answering the charge that in 1825 a corrupt bargain had made Adams President and himself Secretary of State. See Clay's speech at Pittsburg; June 20, 1827, in Niles, XXXII, 299. On June 29, Clay published his first denial of the "bargain and corruption" charges; *ibid.* p. 350. *Cf.* Parton, Life of Jackson, III, 111.

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tinged with the bitterness which made possible, a few years later, the attempt at nullification of the tariff of 1832. On the other hand, the protective policy was popular throughout the North, more especially in the very states whose votes were essential to Jackson, in New York, Pennsylvania, and Ohio. The Jackson men needed the votes of these states, and were not so confident of getting them as they might reasonably have been. They failed, as completely as their opponents, to gauge the strength of the enthusiasm of the masses for their candidate; and they did not venture to give the Adams men a chance of posing as the only true friends of domestic industry.

The twentieth Congress met for its first session in December, 1827. The elections of 1826, at which its members were chosen, had not been fortunate for the administration. When Congress met, there was some doubt as to the political complexion of the House; but this was set at rest by the election to the speakership of the Democratic candidate, Stephenson of Virginia.[1] The new speaker, in the formation of the committees, assumed for his party the direction and responsibility of the measures of the House. On the committee on manufactures, from which the tariff report and the tariff bill were to come, he appointed five supporters of Jackson and two supporters of Adams. The chairmanship, however, was given to one of the latter, Mallary of Vermont, who, it will be remembered, had been a member of the Harrisburg convention.

Much doubt was entertained as to the line of action the committee would follow. The Adams men feared at first that it would adopt a policy of simple delay and inaction. This fear was confirmed when, a few weeks after the beginning of the session, the committee asked for power to send for persons and papers in order to obtain more information on the tariff. Mallary, their chairman, was opposed to granting the request, which appeared to him to be made only as a pretext for delay. The Adams men, who formed the bulk of the ardent protectionists,

[1] Stephenson's election is said to have been brought about by Van Buren's influence; Parton, Life of Jackson, III, 135. It is worth while to bear this in mind, in view of the part played by Van Buren later in the session.

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voted with him against acceding to the committee's request. But the Southern members united with the Jackson men from the North, and between them they secured the passage of the resolution asked by the committee.[1] The debate and vote on the resolution sounded the key note of the events of the session. They showed that the Jackson men from the South and the North, though opposed to each other on the tariff question, were yet united as against the Adams men.[2]

But the policy of delay, if such, in fact, had been entertained by the opposition, was abandoned. On January 31, the committee presented a report and a draft of a tariff bill, which showed that they had determined on a new plan, and an ingenious one. What that plan was, Calhoun explained very frankly nine years later, in a speech reviewing the events of 1828 and defending the course taken by himself and his Southern fellow members.[3] A high tariff bill was to be laid before the House. It was to contain not only a high general range of duties, but duties especially high on those raw materials on which New England wanted the duties to be low. It was to satisfy the protective demands of the Western and Middle states, and at the same time to be obnoxious to the New England members. The Jackson men of all shades, the protectionists from the North and the free-traders from the South, were to unite in preventing any amendments. That bill, and no other, was to be voted on. When the final vote came, the Southern men were to turn around, and vote against their own measure. The New England men, and the Adams men in general, would be unable to swallow it, and would also vote against it. Combined, they would prevent its passage, even though the Jackson men from the North voted for it. The result would be that no tariff bill at all would be passed during the session, which was the

[1] The power granted to the committee by this resolution, to examine witnesses, was used to a moderate extent. A dozen wool manufacturers were examined, and their testimony throws some light on the state of the woollen manufacture at that time. See Taussig, Protection to Young Industries, pp. 45, 46. The testimony is printed in full in American State Papers, Finance, V, 783–845.

[2] Congressional Debates, IV, 862, 870.

[3] Speech of 1837; Works, III, 46–51.

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object of the Southern wing of the opposition. On the other hand, the obloquy of defeating it would be cast on the Adams party, which was the object of the Jacksonians of the North. The tariff bill would be defeated, and yet the Jackson men would be able to parade as the true "friends of domestic industry."

The bill by which this ingenious solution of the difficulties of the opposition was to be reached, was reported to the House on January 31 by the committee on manufactures. As matters turned out, it was passed eventually, to the surprise of its authors, both by House and Senate, and became, with a few unessential changes, the tariff act of 1828. It may here be described in detail.[1]

In the first place, the committee's bill proposed a large increase of duties on almost all raw materials. The duty on pig iron was to go up from 56 to 62½ cents per hundredweight, on hammered bar iron from 90 to 112 cents per hundredweight, and on rolled bar from $30 to $37 per ton. The increase on hammered bar had been asked by the Harrisburg convention. But on pig and on rolled bar no one had asked for an increase, not even the manufacturers of iron who had testified before the committee.[2]

The most important of the proposed duties on raw materials, however, were on hemp, flax, and wool. The existing duty on hemp was $35 per ton. It was proposed to increase it immediately to $45, and further to increase it by an annual increment of $5 till it should finally reach $60. Hemp of coarse quality was largely raised in the country at that time, especially in Kentucky. It was suitable for the making of common ropes and of cotton bagging, and for those purposes met with no competition from imported hemp. Better hemp, suitable for making cordage and cables, was not raised in the country at all,

[1] The bill as reported by the committee is printed in Congressional Debates, IV, 1727.

[2] See the testimony of the three iron manufacturers who were examined; American State Papers, Finance, V, 784–792. Mallary, in introducing the bill, said: "The committee gave the manufacturer of iron all he asked, even more"; Congressional Debates, IV, 1748.

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the supply coming exclusively from importation. The preparation of this better quality ("water-rotted" hemp) required so much manual labor, and labor of so disagreeable a character, that it would not have been undertaken under any circumstances by the hemp-growers of this country.[1] Under such conditions an increase of duty on hemp could be of no benefit to the American grower. Its effect would be simply to burden the rope-makers and the users of cordage, and ultimately the ship-builders and ship-owners who were the chief consumers. The facts were much the same with flax; yet the same high duty was proposed on flax.

On wool a proposal of a similar kind was made. The duty under the tariff of 1824 had been 30 per cent. This was to be changed to a mixed specific and *ad valorem* duty, the first mixed duty ever enacted in the United States. Wool was to pay seven cents a pound (this was reduced to four cents in the act as finally passed), and in addition 40 per cent in 1828, 45 per cent in 1829, and thereafter 50 per cent. The object of the mixed duty was to make sure that a heavy tax should be put on coarse wool. The coarse wool, used in the manufacture of carpets and of some cheap flannels and cloths, was not then grown in the United States to any extent. In fact, it has been grown at no time in this country, but has always been imported, mainly from Asia Minor and from South America. Its cost at the place of exportation was in 1828 from four to ten cents a pound.[2] The price being so low, a simple *ad valorem* duty would not have affected it much. But the additional specific duty of seven (four) cents weighted it heavily. The *ad valorem* part of the duty reached the higher grades of wool, which were raised in this country, and it was calculated to please the farmer. The specific part reached the lower grades, which were not raised in this country, and was calculated to annoy and em-

[1] Gallatin, Memorial of the Free Trade Convention (1831), p. 51. This admirable paper, perhaps the best investigation on tariff subjects ever made in the United States, is unfortunately not reprinted in the edition of Gallatin's collected works. The original pamphlet is very scarce. The memorial is printed in U.S. Documents, 1st session, 22d Congress, Senate Documents, vol. i, no. 55.

[2] Gallatin, Memorial, p. 67.

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barrass the manufacturers. This double object, and especially the second half of it, the Jackson men wanted to attain, and therefore abandoned the policy of admitting the cheap wool at low rates, — a policy which has been followed in all our protective tariffs with the sole exception of that of 1828.[1]

Another characteristic point in the scheme was the handling of those duties on woollens that corresponded to the duties on cheap wool. It had been customary to fix low duties on the coarse woollen goods made from cheap wool, partly because of the low duty on the wool itself, and partly because coarse woollens were used largely for slaves on Southern plantations. Thus in 1824 woollen goods costing less than 33⅓ cents a yard had been admitted at a duty of 25 per cent, while woollens in general paid 33⅓ per cent. In 1828 this low duty on coarse woollens was continued, although the wool of which they were made was subject for the first time to a heavy duty. The object again was to embarrass the manufacturers, and make the bill unpalatable to the protectionists and the Adams men.

The same object appeared in the duty on molasses, which was to be doubled, going from five to ten cents a gallon. A spiteful proviso was added in regard to drawbacks on rum. It had been customary to allow a drawback on the exportation of rum distilled from imported molasses. The bill of 1828, and the act as finally passed, expressly refused all drawbacks on rum; the intention obviously being to irritate the New Englanders. The animus appeared again in the heavy duty on

[1] It was followed in 1824, 1832, 1842, and again in the wool and woollens act of 1867, on which the existing duties (1887) are based. The rates on wool have been:

	1828	1832	1842	1867
General duty on wool	30 per cent	4c plus 40 per cent	3c plus 30 per cent	10c–12c plus 11 per cent
Duty on cheap wool	15 per cent on wool under 10c	free on wool under 8c	5 per cent on wool under 7c	3c on wool under 12c

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sail-duck, and the refusal of drawback on sail-duck exported by vessels in small quantities for their own use.[1]

In the duties on woollen goods, the changes from the schedule proposed by the Harrisburg convention were on the surface not very great; but in reality they were important. The committee gave up all pretence of *ad valorem* duties. This was not an insignificant circumstance; for the *ad valorem* rate of the minimum system was said by its opponents to be no more than a device for disguising the heavy duties actually levied under it. The committee brushed aside this device, and made the duties on woollens specific and unambiguous. On goods costing 50 cents a square yard or less, the duty was 16 cents; on goods costing between 50 cents and $1.00, 40 cents; on those costing between $1.00 and $2.50, $1.00; and on those costing between $2.50 and $4.00, $1.60. Goods costing more than $4.00 were to pay 45 per cent. The specific duties, it will be seen, were the same as if an *ad valorem* duty of 40 per cent had been assessed, on the minimum principle, on valuations of 50 cents, $1.00, $2.50, and $4.00. The changes from the Harrisburg convention scheme were, therefore, the arrangement of specific duties in such a way that they were equivalent to an *ad valorem* rate of but 40 per cent (the convention had asked 50 per cent); and, next, the insertion of a minimum point of $1.00, the Harrisburg scheme having allowed no break between 40 cents and $2.50. The first change might have been submitted to without protest by the protectionists. But the second was like putting a knife between the crevices of their armor. We have already noted the importance of the gap between the minimum points of 40 cents and $2.50. A very large part of the imported goods were worth, abroad, in the neighborhood of $1.00; and the largest branch of the domestic manufacture made goods of the same character and value. The original scheme had given a very heavy duty, practically a pro-

[1] Sail-duck was charged 9 cents a yard, with an increase of ½ cent yearly, until the duty should finally be 12½ cents. This was equivalent to 40 or 50 per cent. In 1824 the duty had been 15 per cent. Drawback was refused on any quantity less than 50 bolts exported in one vessel at one time.

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hibitory duty, on these goods. The new scheme gave the comparatively insignificant duty of 40 cents. As one of the protectionists said: "The dollar minimum was planted in the very midst of the woollen trade." [1]

The whole scheme was ingeniously framed with the intention of circumventing the Adams men, especially those from New England. The heavy duties on iron, hemp, flax and wool were bitter pills for them. The new dollar minimum took the life out of their scheme of duties on woollen goods. The molasses and sail-duck duties, and the refusal of drawbacks on rum and duck, were undisguised blows at New England. At the same time, some of these very features, especially the hemp, wool, and iron duties, served to make the bill popular in the Western and Middle states, and made it awkward to the Adams men to oppose it. The scheme was characteristic of the politicians who were then becoming prominent as the leaders of the Democracy, men of a type very different from the statesmen of the preceding generation. Clay informs us that it was one of the many devices that had their origin in the fertile brain of Van Buren.[2] Calhoun said, in 1837, that the compact between the Southern members and the Jackson leaders had come about mainly through Silas Wright; and Wright made no denial.[3]

[1] Congressional Debates, IV, 2274. See the statement of the effect of the minimum system in State Papers, 1827–8, no. 143. Davis (of Mass.) said that the minimum of $1.00 "falls at a point the most favorable that could be fixed for the British manufacturer. . . . It falls into the centre of the great body of American business." Congressional Debates, IV, 1894, 1895. See to the same effect the speech of Silas Wright, *ibid.* p. 1867.

[2] "I have heard, without vouching for the fact, that it [the tariff of 1828] was so framed on the advice of a prominent citizen, now abroad [Van Buren had been made minister to England in 1831], with the view of ultimately defeating the bill, and with assurances that, being altogether unacceptable to the friends of the American system, the bill would be lost." Clay's speech of February, 1832; Works II, 13.

[3] See Calhoun's speech of 1837, as cited above, p. 31. In the debate of 1837, Wright admitted the compact with the Southern members, but said that he had warned them that the New England men might in the end swallow the obnoxious bill; Congressional Debates, XIII, 922, 926, 927. Wright was a member of the committee on manufactures, and was the spokesman of the Jackson men who formed the majority of its members. He had charge of the measure before the House. Jenkins, Life of Wright, pp. 53–60.

The Adams men saw through the scheme at the time. Clay wrote to J. J. Critten-

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The result of this curious complication of wishes and motives was seen when the tariff bill was finally taken up in the House, in March. Mallary, as chairman of the committee on manufactures, introduced and explained the bill. Being an Adams man, he was of course opposed to it, and moved to amend by inserting the scheme of the Harrisburg convention. The amendment was rejected by decisive votes, 102 to 78 in committee of the whole,[1] and 114 to 80 in the House. The majority which defeated the amendment was composed of all the Southern members, and of the Jackson members from the North, chiefly from New York, Pennsylvania, Ohio and Kentucky. The minority consisted almost exclusively of friends of the administration.[2] Mallary then moved to substitute that part only of the Harrisburg convention scheme which fixed the duties on wool and woollens; that is, the original minimum scheme, with a uniform duty of 40 per cent on wool. This too was rejected, but by a narrow vote, 98 to 97.[3] The Jackson men permitted only one change of any moment: they reduced the specific duty on raw wool from seven cents, the point fixed by the committee, to four cents, the *ad valorem* rate remaining at 40 per cent.[4] The duty on molasses was retained by the same combination that refused to accept the Harrisburg scheme.[5] The Southern members openly said that they meant to make the tariff so

den, in February, even before the House began the discussion of the bill: "The Jackson party are playing a game of brag on the subject of the tariff. They do not really desire the success of their own measure; and it may happen in the sequel that what is desired by neither party will command the votes of both." Life of Crittenden, I, 67.

[1] Congressional Debates, IV, 2038.

[2] See Niles, XXXV, 57, where the various votes on the bill are analysed. The vote on Mallary's amendment was:

Yeas . . .	78 Adams men,	2 Jackson men, . . .	80
Nays . . .	14 " " ,	100 " " , . . .	114

[3] Congressional Debates, IV, 2050.

[4] The Adams men seem to have opposed this reduction. The vote was:

Yeas . . .	10 Adams men,	90 Jackson men, . . .	100
Nays . . .	79 " " ,	20 " " , . . .	99

[5] On reducing the molasses duty, the vote was:

Yeas . . .	72 Adams men,	10 Jackson men, . . .	82
Nays . . .	19 " " ,	95 " "	114

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bitter a pill that no New England member would be able to swallow it.[1]

When the final vote on the bill came, the groups of members split up in the way expected by the Democrats. The Southern members, practically without exception, voted against it. Those from the Middle and Western states voted almost unanimously for it. The Jackson men voted for their own measure for consistency's sake; the Adams men from these states joined them, partly for political reasons, mainly because the bill, even with the obnoxious provisions, was acceptable to their constituents. Of the New England members a majority, 23 out of 39, voted in the negative. The affirmative votes from New England, however, were sufficient, when added to those from the West and the Middle states to ensure its passage. The bill accordingly passed the House.[2]

This result had not been entirely unexpected. The real struggle, it was felt, would come in the Senate, where the South and New England had a proportionately large representation. In previous years the Senate had maintained, in its action on the tariff bills of 1820 and 1824, a much more conservative position than the House.[3] But in 1828 the course of events in the Senate was in the main similar to that in the House. The bill was referred to the committee on manufactures, by whom it was returned with amendments. The most important of these amendments referred to the duty on molasses

[1] Most of the Southern members kept silence during the debates on the details of the bill. After its third reading, McDuffie and others made long speeches against it. One of the South Carolina Congressmen, however, said frankly: "He should vote for retaining the duty on molasses, because he believed that keeping it in the bill would get votes against its final passage." Congressional Debates, IV, 2349. The Jackson free-traders from the North (there were a few such) followed the same policy; see Cambreleng's remarks, *ibid.* 3326. See the passage quoted in Niles, XXXV, 52.

[2] The vote was:

Yeas . . .	61 Adams men,	44 Jackson men,	. . . 105
Nays	35 " " ,	59 " " , . . .	94

Had six of those New England members who voted yea, refused to do so, the bill would have failed; Niles, *loc. cit.*

[3] The tariff of 1824 was much changed in the Senate from the shape in which it had been passed by the House. Annals of Congress, 1823–4, pp. 723–735.

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and to the duties on woollen goods. The duty on molasses was to be reduced to seven and one-half cents a gallon. The House, it will be remembered, had fixed it at ten cents. The duties on woollen goods, in the bill as passed by the House, had been made specific, equivalent to 40 per cent on minimum valuations of 50 cents, $1.00, $2.50, and $4.00. The Senate committee's amendment made the duties *ad valorem* in form, to be assessed on the minimum valuations just mentioned. The rate was to be 40 per cent for the first year; thereafter, 45 per cent.[1]

Other amendments were proposed, all tending to make the bill less objectionable to the New England Senators. Most of them were rejected. The proposed reduction on molasses was rejected by the same combination that had prevented the reduction from being made in the House. The Southern Senators, and those from the North who supported Jackson, united to retain the duty of ten cents. When Webster moved to reduce the duty on hemp, only the New England Senators voted with him. Again, an attempt was made to increase the duty on coarse woollens, on which, it will be remembered, the House had put a low rate, notwithstanding the heavy duty on coarse wool. The Senate, by a strict party vote, retained the duty as the House had fixed it. One of the amendments, however, was carried, *viz.*, that which changed the duties on woollens to an *ad valorem* rate of 45 per cent. Two Democratic Senators, Van Buren and Woodbury, who had voted with the South against other amendments, voted in favor of this one. It was carried

[1] It was expected that this change to *ad valorem* duties would have still another effect. According to the method then in use for assessing *ad valorem* duties, the dutiable value of goods imported from Europe was ascertained by adding 10 per cent to the cost or invoice value; see act of 1828, Statutes at Large, IV, 274, substantially re-enacting the provisions of the revenue-collection act of 1789, Statutes at Large, I, 141. It was expected that by the force of this provision the effect of the *ad valorem* rate, under the Senate amendment, would be to increase the duty not merely to 45 per cent, but to 49½ per cent. Hence Webster, in his speech on the bill, spoke of the amendment as carrying the duty "up to 45 or perhaps 50 per cent *ad valorem*"; Works, III, 241. But the Secretary of the Treasury, Rush, finally decided, very properly, that the provision did not apply to duties assessed on minimum valuations, thereby causing much dissatisfaction among the protectionists; see Congressional Debates, VI, 802.

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by a vote of 24 to 22, whereas all others had been rejected by a vote of 22 to 24.[1]

With this amendment, the bill was finally passed by the Senate. The vote was 26 to 21. The Southern Senators (except the two from Kentucky, and one each from Tennessee and Louisiana) voted against it. Those from the Middle and Western states all voted for it. Those from New England split; six voted yea, five nay. The result seems to have depended largely on Webster. His colleague Silsbee voted against the bill. Webster himself had been in doubt a week before the final vote.[2] Finally he swallowed the bill; and he carried with him enough of the New England Senators to ensure its passage.

Webster defended his course to his constituents on the ground that the woollens amendment (fixing the 45 per cent *ad valorem* rate) had made the bill much more favorable to the manufacturers. He said he should not have voted for it in the shape in which the House passed it.[3] Calhoun made the same statement in 1837, in the speech to which reference has already been made.[4] No doubt the slight change on woollens mollified in a degree the New England men. But, after all, political motives — or, as Webster put it, "other paramount considerations" — caused them to swallow the bill. They were afraid to reject it, for fear of the effect in the approaching campaign and election.[5]

[1] The votes in the Senate are given in Niles, XXXIV, 178, 179, 196.

[2] Memoirs of J. Q. Adams, VII, 530, 534.

[3] In a speech made a month later; printed in his Works, I, 165. In the House, the representative from Boston had voted against the bill, and Webster commended his action. In his Senate speech on the bill Webster had said that, even at the 45 per cent rate, the duty on woollens was barely sufficient to compensate for the duty on wool; Works, III, 241.

[4] Works, III, 50, 51. Calhoun even accused Van Buren of being the "real author" of the tariff of 1828. He said that, but for Van Buren's vote in favor of the woollen amendment, there would have been a tie on the amendment; his own casting vote as Vice-President would have defeated it; the bill, without the amendment, would have been rejected by Webster and the other New England Senators. Therefore, Van Buren was responsible for its having been passed.

[5] After the final vote in the House, John Randolph said: "The bill referred to manufactures of no sort or kind, except the manufacture of a President of the United

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The act of 1828 had been passed in a form approved by no one. It was hardly to be expected that such a measure should long remain on the statute-book, and it was superseded by the act of 1832. During the intervening four years several causes combined to lead to more moderate application of the protective principle. The protective feeling diminished. Public opinion in the North had been well-nigh unanimous in favor of protection between 1824 and 1828; but after 1828, although there was still a large preponderance for protection,[1] there was a strong and active minority against it. The tariff question ceased to be an important factor in politics, so that this obstacle to its straightforward treatment was removed. And, finally, there was a strong desire to make some concession to the growing opposition of the South. It is true that in 1832 Clay and the more extreme protectionists wished to retain the act of 1828 intact, and to effect reductions in the revenue by lowering the non-protective duties only.[2] But most of the protectionists, led by Adams, took a more moderate course, and consented to the removal of the abominations of 1828.

Even before 1832 some changes were made. In 1830 the molasses abomination was got rid of. The duty on molasses was reduced from ten cents a gallon to five cents, the rate imposed before 1828, and the drawback on exportation of rum

States." In 1833, Root, a representative from New York, said: "The act of 1828 he had heard called the bill of Abominations. . . . It certainly grew out of causes connected with President-making. It was fastened on the country in the scuffle to continue the then incumbent in office, on one side, and on the other to oust him and put another in his stead. . . . The public weal was disregarded, and the only question was: Shall we put A or B in the presidential chair? When it was thought necessary to secure a certain state in favor of the then incumbent, a convention was called at Harrisburg to buy them over. [See, however, the note to p. 28, above.] On the other side another convention was called, who mounted the same hobby. The price offered was the same on both sides: a high tariff. One candidate was thought to be a favorite because he was supposed to be a warm friend of the protective system, and would support a high tariff; but they were told, on the other side, that their candidate would go for as high a tariff." Congressional Debates, IX, 1104, 1105.

[1] As Gallatin admits: "It is certain that at this time (1832) the tariff system is supported by a majority of the people and of both Houses of Congress." Works, II, 455.

[2] Works, I, 586, 595.

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was restored.[1] At the same time the duties on tea, coffee, and cocoa, were lowered, as one means of reducing the revenue.[2]

The most important step taken in 1832 was the entire abolition of the minimum system. Woollen goods were subjected to a simple *ad valorem* duty of 50 per cent. The minimum system, as arranged in the act of 1828, had been found to work badly. The manufacturers said it had been positively injurious to them.[3] As might have been expected, it led to attempts at evasion of duties, to under-valuation, and to constant disputes at the custom houses. The troubles arose mainly under the dollar minimum. Goods worth $1.25 or $1.50 were invoiced so as to bring their value below $1.00, in order to escape the duty under the next minimum point, $2.50. The difficulties were ascribed to the depravity of foreign exporting houses and to the laxity of the revenue laws, and in 1830 a special act in regard to goods made of cotton or of wool was passed, making more stringent the provisions for collecting duties. But the troubles continued nevertheless.[4] Finally, in 1832, the minimum system was swept away. The *ad valorem* duty of 50 per cent which was put in its place was felt to be not without its dangers in the matter of fraud and under-valuation, but it was harmless as compared with the minimum system of the act of 1828.[5]

[1] Statutes at Large, IV, 419. The act seems to have passed without debate or opposition.

[2] *Ibid.* p. 403.

[3] Browne, of Boston, a manufacturer who had actively supported the minimum system, declared: "I could manufacture to better advantage under the tariff of 1816 than under that of 1828; for the duty on wool was then lower, and that on cloths a better protection." Niles, XLI, 204.

[4] Statutes at Large, IV, 400. See the speeches of Mallary, Congressional Debates, VI, 795–803, and of Davis, *ibid.*, p. 874, for instances and proofs of the frauds. The act provided for forfeiture of goods fraudulently undervalued; but no verdicts under it could be obtained. At the protectionist convention held in New York in 1831, one of the speakers said: "The same mistaken current of opinion which prevailed on 'change, entered and influenced the jury-box. Men thought the law rigorous and severe. They considered it hard that a man should forfeit a large amount of property for a mere attempt to evade an enormous duty. In two years there was but a single case pursued into a court of justice." Niles, XLI, 203. *Cf. ibid.*, Appendix, p. 33.

[5] J. Q. Adams, who was most active in framing the act of 1832, tried to embody the "home valuation" principle into it; but in vain; Congressional Debates, VIII,

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The other "abominations" of the act of 1828 were also done away with in 1832. The duty on hemp, which had been $60 a ton in 1828, was reduced to $40. Flax, which had also been subjected to a duty of $60 a ton in 1828, was put on the free list. The duties on pig and bar iron were put back to the rates of 1824. The duty on wool alone remained substantially as it had been in 1828, being left as a compound duty of four cents a pound and 40 per cent. But even here the special abomination of 1828 was removed; cheap wool, costing less than eight cents a pound, was admitted free of duty. In fact, the protective system was substantially put back to where it had been in 1824, except in the duties on wool and woollens, which were higher than in 1824. The result was to clear the tariff of the excrescences which had grown on it in 1828, and to put it in a form in which the protectionists could advocate its permanent retention.

Even in this modified form, however, the protective system could not stand against the attacks of the South. In the following year, 1833, the compromise tariff was passed. It provided for a gradual and steady reduction of duties. That reduction took place; and in July, 1842, a general level of 20 per cent was reached. Two months later, in September, 1842, a new tariff act, again of distinctly protective character, went into effect. But this act belongs to a different period, and has a different character from the acts of 1824, 1828, and 1832. The early protective movement, which began in 1819 and was the cause of the legislation of the following decade, lost its strength after 1832. Strong popular sentiment in favor of protection well-nigh disappeared, and the revival of protection in 1842 was due to causes different from those that brought about the earlier acts. The change in popular feeling is readily explained. The primary object of the protective legislation of the earlier period had been attained in 1842. The movement was, after all, only an effort, half conscious of its aim, to make more easy

3658, 3671. He also tried to give the government an option to take goods on its own account at a slight advance over the declared value, but this plan also was rejected; *ibid.*, p. 3779.

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the transition from the state of simple agriculture and commerce which prevailed before the war of 1812, to the more diversified condition which the operation of economic forces was reasonably certain to bring about after 1815. The period of transition was passed, certainly by 1830, probably earlier.[1] At all events very soon after 1830 it was felt that there was not the same occasion as in previous years for measures to tide it over, and a decline in the protective feeling was the natural consequence.

Not the least curious part of the history of the act of 1828 is the treatment which it has received from the protectionist writers. At the time, the protectionists were far from enthusiastic about it. Niles would not admit it to be a fair application of the protective policy,[2] while Matthew Carey called it a "crude mass of imperfection," and admitted it to be a disappointment to the protectionists.[3] In later years, however, when the details of its history had been forgotten, it came to be regarded with more favor. The duties being on their face higher than those of previous years, it was considered a better application of protective principles. Henry C. Carey, on whose authority rest many of the accounts of our economic history, called it "an admirable tariff, the first really protective one ever established by Congress."[4] He represented it as having had great effect on the prosperity of the country, and his statements have often been repeated by protectionist writers.

It is almost impossible to trace the economic effect of any legislative measure that remains in force no more than four years; and certainly we have not the materials for ascertaining the economic effects of the act of 1828. Taken by itself, that act is no more than a stray episode in our political history. It illustrates the change in the character of our public men and

[1] Taussig, Protection to Young Industries, pp. 39, 45, and *passim*.

[2] Niles, XXXVII, 81; XXXVI, 113, and elsewhere. Niles objected especially to the $1.00 minimum on woollens.

[3] See his Common Sense Address (1829), p. xi; The Olive Branch, no. iii, p. 54, no. iv, p. 3 (1832).

[4] See his Review of the Report of D. A. Wells (1869), p. 4; and to the same effect, Harmony of Interests, p. 5, and Social Science, II, 225.

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our public life which took place during the Jacksonian time. As an economic measure, it must be considered, not alone, but as one of the series of measures, begun tentatively in 1816, and carried out more vigorously in 1824, 1828, and 1832, by which a protective policy was maintained for some twenty years. It is very doubtful whether, with the very defective information at our disposal, we can trace the effect even of this whole series of tariff acts on the prosperity of the country. Probably we can reach conclusions of any value only on certain limited topics, such as the effect of protection to young industries during this time. As to the general effect of the protective measures we must rely on deductions from general principles. At all events, no one can trace the economic effects of the act of 1828. To ascribe to it the supposed prosperity of the four years in which it was in force, as Mr. Carey and his followers have done, is only a part of that exaggeration of the effect of protective duties which is as common among their opponents as among their advocates.

F. W. TAUSSIG.

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CONTROL OF IMMIGRATION. I.

IT is constantly happening in practical politics that a line of conduct which at one time seems advisable and even necessary after a while lands the nation in such difficulties that it must in some way be changed. There is at first great difficulty in doing this. The old truth has been so firmly believed and so often and so positively affirmed that a feeling of shame prevents its flat repudiation. The first attack on it is made in an apologetic spirit and with the assertion, perhaps, that this is an exceptional case, and that the general rule still holds good. Possibly a direct breach is made in the old rule without any attempt at apology, it being considered better to ignore the connection between the present example and the previous cases. Gradually, however, necessity compels the more frequent infringement of the old principle and finally its entire abandonment. Then it often happens that the former believers are the most violent in their attacks on the old belief, as new converts are proverbially the most zealous persecutors. The old principle is denounced in unmeasured terms and the contrary course is fanatically followed without the perception that it is as one-sided as the old. Men by nature are partisan, and their intellectual convictions, even in the most cold-blooded questions of political expediency, are largely determined by their emotions.

The present movement in favor of restricting immigration is an example of this process of revising our policy in such a way as to break with our previous beliefs and principles. The whole history of this country, of course, has been one of colonization and immigration. The original need was for labor — a need which, at one time, in fact satisfied itself by the compulsory importation of negroes to work the rice and sugar fields of the South. The task which lay before the original settlers was immense. There was in front of them to be subdued a wilderness three thousand miles wide, covered with primeval forest,

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unbroken by roads and even unexplored. The colonist could have maintained his equanimity in the presence of this great task only by ignoring it and contenting himself with an open frontier subject to Indian invasions as one of the ordinary conditions of existence. His life was a sort of constant picket duty, without relief or furlough, and practically without truce. But although the original settler did not trouble himself with the problem how the whole continent was to be filled up and added to the realm of civilization, and although he probably had very vague notions as to when such a result would be consummated, yet the spirit of history was busy with the task and brought it to a conclusion much sooner than could have been deemed possible. At first the progress was extremely slow. The active force was only the original body of colonists, few in number and armed with the hand implements of the seventeenth century — and not the best of these. The principal addition to this original labor-force came from the natural increase of the population and its excess over the mortality. This excess was very considerable, although the mortality must have been large during the first few years of the settlement. But although the rate of increase was perhaps the largest of which we have any historic example, yet the basis for the increase was so insignificant that the absolute numbers remained small. At the close of the Revolution there were less than three million men in the thirteen colonies.[1] It would have taken a very long period for

[1] "At the recent meeting of the American Antiquarian society, Professor F. B. Dexter presented an important paper on 'The Estimates of Population in the New England Colonies.' The general conclusions are that in 1640 the British colonies contained an aggregate population of a little over 25,000 whites — 60 per cent in New England, most of the remainder in Virginia. In 1660 the total had increased to 80,000 — half of them in Maryland and Virginia. In 1689 the number was probably a little over 200,000; it reached half a million in 1721, a million in 1743, and two millions in 1767. This period was marked by rapid growth of the Middle colonies. Although the increase just before the Revolution was rapid, the population at the outbreak of the war cannot have been much more than two and a half million. These figures are on the whole somewhat lower than Bancroft's; for the later dates there is a tolerably constant difference of four or five per cent. The Revolutionary war caused a sudden check to the growth of population; in Rhode Island and Georgia there was an absolute diminution. In spite of the estimate of C. B. Elliott in 'Walker's Statistical Atlas' (1874), giving more than three million in 1780, it

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natural increase to have covered this continent, especially with the facilities for transportation then afforded. It is well known that two influences, neither of which could have been foreseen, have changed these conditions and brought the whole continent under the subjection of sixty million people. These two things are railroads and foreign immigration on a large scale. Railroads began to be built in 1830; and the foreign immigration, which began to be considerable as early as 1820, acquired immense proportions in the forties and fifties. These two things have given us the labor-force necessary to subdue the wilderness and the means of placing this labor-force exactly where it is most needed and most profitable. Both of them have been necessary, and without them it is utterly improbable that we could have attained the place we now hold. We owe our position as one of the great nations of the world to these two things, and to immigration as much as to railroads. It would be easy also to point out what an important influence this immigration of free laborers, coming as they did overwhelmingly to the Northern states, has had on our internal politics, especially in settling the question of slavery.

When we consider all these things, we shall readily agree that immigration has been one of the prime factors in our development. In accordance with this fact we have always pursued the policy of encouraging it and have welcomed the immigrants to our shores. Why should we change that policy now?

There are, I conceive, several reasons which might lead us to think of doing this. (1) It might be shown, for instance, that various undesirable consequences of this immigration are now for the first time becoming apparent. (2) It might be maintained that the immigrants are now no longer of the same character as those of the earlier decades, and are not a desirable element for the community to acquire. (3) It might be held that the country has reached a stage of development where it no longer needs immigrants, and that what was formerly a

does not seem probable that this number was reached until two or three years after the close of the war." — *The* (N.Y.) *Evening Post*, Dec. 3, 1887.

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blessing is now an embarrassment. If any one of these assertions be true, it would, in my opinion, be a perfectly good reason for discouraging immigration in the future. Then would come up (4) questions of political science: as to the abstract right of immigration; as to the effect of restriction on our international relations; and how such a policy would accord with our general political system and our avowed principles. (5) There would be, finally, the question of the administrative measures necessary, not so much perhaps to prohibit or even restrict immigration, as to control it so as to escape its evils. This would finish the discussion.

It is the object of the following paper to collect what evidence and opinion is accessible on these different points and to present it in an impartial manner. The issue of the whole will probably be simply this: we shall recognize once more that modern civilization has developed social forces which it is impossible to dam up, but which need to be guided into safe channels; and we shall be warned again to "put our house in order."

The Social Effects of Immigration.

The statistics of immigration into the United States are reasonably complete and are pretty well known. They begin with the year 1820. Previous to that time it is not probable that there was any very great influx. At the close of the Revolutionary war, the colonies were poor, their political future was uncertain, their commerce and finances were in a state of confusion, and there could have been very little inducement to Europeans to undertake the difficult and dangerous voyage. During a great portion of the time (from 1783 to 1820) the new republic was on an unfriendly and even hostile footing with the mother country and commercial intercourse was often cut off by embargoes and war. Beginning with 1820[1] the immigrants

[1] Prior to the year 1820, no statistics of immigration were officially kept. By the act of Congress of March 2, 1819, collectors of customs were required to keep a record, and make a quarterly return to the Treasury, of all passengers arriving in their respective districts from foreign ports; and these reports, published from time to

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came at the rate of only a few thousand a year, and it was not till 1825 that the number reached 10,000 annually. In 1827 and again in 1828 there was a marked increase, due perhaps to the commercial depression in England, the number in the latter year reaching 27,382. During the thirties the numbers were much heavier, going as high as 79,340 in 1837. We see during these years the tendency to violent fluctuation from year to year which has since characterized the movement. A total of 100,000 was reached and exceeded in 1842, but the number fell to 52,000 the following year, and the normal immigration seems at that time to have been between these two figures. Suddenly, as a result of the Irish potato famine of 1846, we have the first of those great floods of immigration due to crises in the old world — the first of those impulses whose reflex action has made the movement a permanently large one. The numbers since then, with the exception of two years of the Civil war,

time by the Treasury department, constitute the sources of information as to the progress of immigration. Prior to 1856, the figures show the whole number of aliens arriving; but from 1856 to 1885 inclusive, the number of immigrants only, *i.e.*, of foreign passengers settling in the United States. Since July 1, 1885, immigrants from Canada and Mexico are not included.

It has been estimated that the whole number of aliens coming to the United States from 1789 to 1820, was about 250,000.

IMMIGRATION INTO THE UNITED STATES, 1820–1887.

Year.	Immigrants.	Year.	Immigrants.	Year.	Immigrants.	Year.	Immigrants.
1820.	8,385	1838.	38,914	1856.	195,857	1873.	459,803
1821.	9,127	1839.	68,069	1857.	246,945	1874.	313,339
1822.	6,911	1840.	84,066	1858.	119,501	1875.	227,498
1823.	6,354	1841.	80,289	1859.	118,616	1876.	169,966
1824.	7,912	1842.	104,565	1860.	150,237	1877.	141,857
1825.	10,199	1843.	52,496	1861.	89,724	1878.	138,469
1826.	10,837	1844.	78,615	1862.	89,005	1879.	177,826
1827.	18,875	1845.	114,371	1863.	174,524	1880.	457,257
1828.	27,382	1846.	154,416	1864.	193,195	1881.	669,431
1829.	22,520	1847.	234,968	1865.	247,453	1882.	788,962
1830.	23,322	1848.	226,527	1866.	167,757	1883.	603,322
1831.	22,633	1849.	297,024	Fisc. year end'g June 30.		1884.	518,592
1832.	60,482	1850.	369,980	1867.	298,967	1885.	395,346
1833.	58,640	1851.	379,466	1868.	282,189	1886.	334,203
1834.	65,365	1852.	371,603	1869.	352,768	1887.	484,116
1835.	45,374	1853.	368,645	1870.	387,203		
1836.	76,242	1854.	427,833	1871.	321,350	Total,	13,632,771
1837.	79,340	1855.	200,877	1872.	404,806		

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have always been in the hundred thousands. The first impulse lasted almost ten years, and reached its maximum in 1854 with an immigration of 427,833. The years of prosperity after the Civil war started another wave which went on increasing up to the crisis of 1873, the number in that year reaching 459,803. Again, with the fictitious start which we made towards prosperity in 1879 and 1880, came a new tidal wave, sweeping up to the enormous number of 788,962 in 1882. It is to be noticed that in no case is the ebb so low as was that of the preceding waves; and to-day we are receiving over four hundred thousand foreigners annually upon our shores. Thus it happens that while during the *sixty* years from 1820 to 1879 the total immigration had been less than ten millions, during the next *six* years we added over three millions to that number; and at the present time the total aggregates more than fourteen millions. Of this enormous number, nearly one-half has arrived since 1870; that is, as many as during the previous fifty years.

Until the last few years this extraordinary movement, so far as we can discover, excited no alarm, but was on the contrary distinctly favored. It is true that old Ben. Franklin declared that it was better for the country to grow by natural increase than by bringing in foreigners; but Franklin was in favor of early marriages and large families and probably looked at the matter from this point of view. It is also true that we had the Alien and Sedition acts in 1798, and the American or Know Nothing movement in 1855–6; but the former were political measures, and the latter was a No Popery excitement rather than an attempt to restrict immigration.[1] In fact the immigrants were very welcome. The country was large, the demand for labor great, and there was constant expansion westward. Already in 1820 in-

[1] For a specimen of the Know Nothing literature see John P. Sanderson, Republican Landmarks (Philadelphia, 1856). He gives full statistics of immigration up to that day, and information concerning the low condition of the immigrants and the sending of convicts, paupers, *etc.*, to our shores. See also S. C. Busey, Immigration, its Evils and Consequences (New York, *circa* 1856). Matthew Carey, writing in 1826, was altogether in favor of immigration. See his Reflections on the subject of Emigration from Europe. Even Dr. Jesse Chickering, writing in 1848, contented himself with pointing out the influence on population of the immigration thus far; see his Immigration into the United States.

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ternal improvements had begun to open up the Ohio and even the Mississippi valleys, and great states were only waiting to be peopled in order to rank with the older commonwealths in the East. In 1830 railroads began to be built, which not only gave additional employment to labor but opened up a vast extent of territory to the colonist. And so it went on from decade to decade. Every census reported a westward extension of the frontier line, a greater total area of settlement, and the gradual increase of the population in the Ohio and Mississippi valleys to a comfortable agricultural density. The increment of population spent itself in taking up this new territory.[1] Thus from 1820 to 1830 the population increased 32.51 per cent, but the settled area increased during the same period 24.4 per cent, so that the density of population in the settled area increased only 1.4 individuals to the square mile. From 1830 to 1840 population increased 32.52 per cent, settled area 27.6 per cent, and density only 0.8 individuals to the square mile. Even after 1840, when the immigration began to affect population so that in each of the decades following it increased over thirty-five per cent, the settled area increased nearly twenty-two per cent in each decade, so that the density only increased from 21.1 persons to the square mile in 1840 to 26.3 in 1860.

The number of immigrants, again, during the first two decades was small and could easily be absorbed. In comparison

[1] The following table is compiled from the Tenth Census:

	Increase per cent in Population.	Increase per cent in Settled Area.	Density to Square Mile of Settled Area.
1790	. . . . .	. . . . .	16.4
1800	35.10	27.4	17.4
1810	36.38	33.4	17.7
1820	33.06	24.7	18.9
1830	32.51	24.4	20.3
1840	33.52	27.6	21.1
1850	35.83	21.3	23.7
1860	35.11	22.0	26.3
1870	22.65	6.5	30.3
1880	30.08	23.3	32.0

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with the native free population, which if not perfectly homogeneous was very nearly so, speaking the same language and having the same political institutions and the same traditions, the advent of this foreign element was of little moment. Even as late as 1840 the white population numbered 14,195,805, while the total immigration since 1820 had been only 667,423. The foreign increment, as long as these proportions were maintained, could be readily and rapidly assimilated; it did not add itself to an unassimilated mass already present. Still further, if we can trust the early statistics, the immigrants were of various classes, such as merchants, artisans, farmers and professional men, and for all these classes there was at that time a demand. There came, in those earlier days, no great mass of unskilled labor, crowding the unskilled occupations. When the great movement of unskilled laborers did begin, in 1846, the country was prepared to receive them. There were the railroads and canals; the boundless prairies for the farmers; the growing cities and towns for the artisans, and the factories for the unskilled laborers. Even in the period from 1865 to 1873 the very activity of speculation and railroad enterprise made an opening for the new-comers. The length of railroads in operation increased from 35,000 in 1865 to 70,000 in 1873; that is, as much line was built in those eight years as during the thirty-five years since 1830. The total amount has since doubled again.

The continuous immigration of such a body of foreigners cannot but have had some effect on the people of the United States. What these effects have been we can judge only indirectly. In the first place it must have had an effect on the character of the population. Our only method of estimating the strength of this influence is by the statistics of population. We have here from one source and another some very suggestive figures. According to the census of 1880 there were in the United States 6,679,943 persons of foreign birth, constituting 13 per cent of the whole population or 15.36 per cent of the native-born population. This comparison however is not a good one; for among the native-born are included the negroes of the South, who are as much an alien element in

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our civilization as are the foreign-born themselves. We must therefore compare the foreign-born with the native white population in order to get a fair idea of the strength of the foreign element. We have then 6,679,943 foreign-born to 36,723,027 native white; *i.e.*, they are 18.1 per cent of the native white. In my opinion it would be perfectly fair to add the 6,580,793 colored persons to this foreign element, in which case we should have 13,260,736 foreign-born and colored to 36,723,027 native whites, or 36.1 per cent of the native whites. Some may however object to this that the colored people speak our language and have no other institutions and customs than those they have acquired here, so that they should be classed simply as a lower, rather than as an alien element in our civilization. I readily agree to this; only it must be remembered that very much the same result is reached when we consider that the blacks are concentrated in the South and the foreign-born in the North, so that in each section the alien (or lower) element stands over against a portion only of our native white population. The proportionate strength of the foreign-born as compared with the entire native white element accordingly fails to show their real strength in the places where they are numerous, as for instance in most of the Northern states. Further, the numbers represent only those persons who were actually born on foreign soil and do not include those of foreign blood. The child of the foreign father and foreign mother, if it is born after the parents have reached this country, is classed as native-born, so that if immigration were to cease our population in course of time would all be native. There is a certain pleasant optimism about this conception that the child born on this soil and breathing this air becomes a full-born American, — at once entitled, as the college diplomas phrase it, to all the privileges which this degree generally carries with it, — and as a matter of fact these children do often, in one generation, become good citizens, even if they are apt to exaggerate the supposed perfect independence of the American. But there is still the foreign blood and in a good many cases the foreign language and customs. The real strength of the element is represented by the

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total number of persons of foreign blood, that is, persons whose parents were of foreign birth. It is impossible to carry the investigation back further than the parents even if it were desirable so to do. But it surely is not unfair to count the first generation born on our soil as of foreign blood, when we allow all the subsequent generations to count as native-born. The census of 1880 showed that there were 14,922,744 persons who had one or both parents foreign-born. But this is 34 per cent of the total white population. That is, out of every three white persons whom you meet on the street, one is of foreign birth or at least of foreign parentage. If we add to these persons of foreign nativity the negro population of the South, we have a total of 21,503,537, or more than two-fifths of the entire population, who on account of race or birth or blood are in reality alien to our American population. In presenting these figures I do not at all ignore the wonderful influence exerted by free institutions and good economic condition in transforming poor and ignorant immigrants into good citizens. We have had too many instances of improvement in the condition of those who have come to these shores poor, ignorant, perhaps even vicious, but who have seized on the chance for a new start and become honest and thrifty. I also recognize the fact that an infusion of new blood is often a benefit to a nation, as has so often been shown in history. I desire only to point out the magnitude of the task we have undertaken, and to put the question whether we have not now on our hands about as much as we can successfully accomplish. If the present immigration continues, the task will never be an easier one but will constantly increase in magnitude. It is commonly estimated that at the present time we have about sixty million people; an increase of ten millions since 1880. But the addition of foreigners alone during that period amounts to one-third of that number; and the increase of persons of foreign parentage must have been very large, for the immigrants are largely in the productive ages of manhood and womanhood. It is therefore probable that if a census were taken at the present time, it would show a still larger percentage of people of alien blood than in 1880.

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But it is in the Northern states, as I have already said, that the foreign-born element shows it real strength. It is massed there over against the native element as the colored population is massed in the South over against the white. This is seen very clearly if we look at the figures for single states. The census of Massachusetts for 1885 was taken with a great deal of care and affords some interesting data for our inquiry. In Massachusetts, in 1885, out of a population of less than two millions, 525,000 were foreign-born, that is over 27 per cent.[1] It is seen at once that the foreign-born are twice as numerous in Massachusetts as they were in the United States at large in 1880. One reason for this is the absence of the colored population to bring up the total number of the native-born. But it is certainly a serious fact that the old Bay state shows such an influx of elements which must be alien to the old New England character. As we shall see later, this immigration has not been attracted by the abundance of free land, but by the growth of the factory system, which gives it an entirely different character.

If now we inquire: Who were the fathers and who were the mothers of the present people of Massachusetts? we reach sufficiently astonishing results. Of all the people of Massachusetts, only 855,491 had native fathers and mothers; while 919,869 had foreign-born parents, and 119,741 were of mixed parentage. Reducing these figures to percentages: 44.05 per cent were of native parentage, 47.36 per cent were of foreign parentage, and 6.17 per cent were of mixed parentage. In relation to blood, the mixed parentages should be included with the foreign; and in that case we have 53.53 per cent partly or entirely of foreign blood. Over one-half of the people of Massachusetts are within one generation of foreign birth. Although we are only a century along in our national existence, one-half of the people of Massachusetts can no longer speak of the constitution as the work of the Fathers except in an adoptive sense; and it is scarcely possible to conceive of the Fathers

[1] In 1875 it was 25.36 per cent, and in 1865 only 20.95 per cent; Census of Massachusetts, 1885, Population and Social Statistics, Part I.

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adopting the mass of Catholic Irish and French Canadians and beer-drinking Germans who make up the foreign-born. In regard to the cities, it is stated:

> There are 68 cities and towns in the commonwealth in which there is an excess of persons of foreign parentage. These cities and towns have a population of 1,132,038 or 58.29 per cent of the total population of the state, while the remaining 280 towns, in which there is an excess of persons of native-born parentage, represent a population of 810,103 or 41.71 per cent of the whole population.[1]

This shows that the people of foreign parentage congregate in the large cities rather than spread over the country. The five largest cities of the state, Boston, Worcester, Lowell, Cambridge, and Fall River, all have an excess of persons of foreign parentage. This is particularly true of the city of Boston, 67.02 per cent of whose population are of foreign or mixed parentage. By far the larger part of these are of wholly foreign parentage.

The strength of the foreign element is made greater, politically, economically and socially, by the fact that it contains so large a proportion of adults. Of the foreign-born population in Massachusetts 84.5 per cent are twenty years and upwards of age; of the native-born only 54.5 per cent. At first sight it seems as if this would have pre-eminently a political effect, by throwing the voting power into the hands of the foreign element. Singularly enough, however, the foreigners do not yet seem to have taken advantage of this relation. Of the foreign-born males of the age of twenty and over, only 47.87 per cent had been naturalized and were legally qualified voters. Over 48 per cent had either not been in the country long enough to be naturalized or had neglected to do so. It illustrates the curiously mixed feeling with which we regard the present immigration that we scarcely know whether we ought to make it a ground of accusation against the immigrants that they neglect the privilege of naturalization, or heave a sigh of relief that they do not claim their right. An interesting table is given below, showing the extent to which the different nationalities

[1] Census of Massachusetts, 1885, I, p. lxxx.

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become naturalized.[1] Part of the difference in the extremes is due to the fact, for instance, that the Irish have been here a good many years, while the Italians are recent arrivals. Still there are immense possibilities for the "Boss" in the 35,600 Irish males twenty years and over who still remain unnaturalized, and in the 17,292 French Canadians; and even the 1,874 Italians might serve as a nucleus around which to gather future arrivals, until some day the Lorenzos and Cosimos may again be despots of city republics, taking the place of the "Pats" and the "Tims" of the present régime.

On the next page will be found another table showing that it is directly the most foreign, so to speak, of the foreign immigrants who are now increasing the most rapidly. Of course it is to be noted that the absolute numbers are not as yet large in these

[1] Table showing the number of aliens, *i.e.*, foreign-born males twenty years of age and over not naturalized, compared with total number of foreign-born males twenty years of age and over in the state of Massachusetts:

Place of Birth.	Aliens.	Foreign-born males 20 years of age and over.	Percentage of aliens of foreign-born males 20 years of age and over.
All countries	99,131	206,227	48.07 per cent.
British America	33,754	49,534	68.14 "
Canada (English)	3,181	5,307	59.94 "
Canada (French)	17,292	22,427	77.10 "
New Brunswick	2,799	5,041	55.52 "
Nova Scotia	8,703	13,645	63.78 "
Europe (except British Isles)	14,578	25,408	57.38 "
Germany	4,473	10,908	41.01 "
Italy	1,874	2,190	85.57 "
Sweden	2,889	4,013	71.99 "
Portugal	2,175	2,898	75.05 "
Great Britain	13,937	30,323	45.96 "
England	10,502	23,339	45.00 "
Scotland	3,262	6,556	49.76 "
Ireland	35,600	98,199	36.25 "

Census of Massachusetts, 1885, I, p. xlvii. Some of the less important countries are omitted in our table.

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cases, but they may possibly be indicative of what is to be the course of the movement in the future.[1]

Other statistics might be given showing the frequency with which the foreign-born are represented in our jails and poor-houses.[2] It may be true, as is so often insisted, that while

[1] Table showing increase of native and foreign-born in Massachusetts, 1875 to 1885. Census of Massachusetts, 1885, I, p. lxxii.

Country of Birth.	Number in 1885.	Increase: 1875 to 1885.	Percentage of increase: 1875–1885.
Total for the State . . .	1,942,141	290,229	17.57 per cent.
United States	1,415,274	189,445	15.45 "
Foreign countries . . .	526,867	107,963	25.77 "
Ireland	244,629	10,073	4.29 "
England	59,033	8,580	17.01 "
Scotland	15,970	3,154	24.61 "
British America . . .	147,352	61,330	71.30 "
Germany	23,115	5,576	31.79 "
France	2,218	— 11	—
Sweden and Norway . .	10,678	6,725	170.12 "
Portugal	6,118	2,413	65.13 "
Italy	3,989	2,281	133.55 "
Wales	1,036	440	73.83 "

[2] The latest statistics were given by Dr. Hoyt at the Fourteenth National Conference of Charities and Correction held at Omaha, August, 1887.

"In the state of New York the proportion of its native-born inhabitants who were in poorhouses and almshouses, as in-door paupers, in 1886, was 1 to every 168 of its native population, while the proportion of those of foreign birth who were in these institutions in the course of the year was 1 to every 35 of its foreign-born population, the ratio being nearly five times greater than the ratio in the native population. We have no exact data as to the nativity of the out-door paupers relieved in the state during the year, but careful observation and the general testimony of the officers charged with the administration of this form of public relief leads to the belief that the disparity in the ratio of foreign-born to native paupers of this class to the population was even greater than that of its in-door paupers.

"The number of insane committed to its various state hospitals for acute cases during 1886, coming mainly from the rural counties, was 1248, of whom 868 were of native and 380 of foreign birth, it being an excess of nearly 42 per cent in the ratio of the insane in the foreign-born population over the ratio of the insane arising from the native population. The ratio of foreign insane, as compared with the ratio of native insane, in the asylums of New York city, Kings and other counties with populous centres, is universally conceded to be much greater than in the state hospitals. A recent investigation into the New York city lunatic asylum on Ward's island, devoted

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the foreign-born are only one-eighth of the population yet they supply one-third of the criminals. I do not lay much stress on this figure, for crime and vice are always most prevalent among the lower classes, and this is a condition of things that will remedy itself as the immigrants become better off economically and more intelligent. It is true that the presence of this large number of foreigners is increasing seriously the illiteracy of the country, and thus lowering the political capacity of the community and its ability to govern itself intelligently, but even this may in the course of time be remedied. The really serious questions are concerning the strain which this large alien element is putting on our institutions and what will be the final effect of this infusion of foreign blood upon our national life.

The great English historian, Stubbs, declares, in the opening sentence of his work:

> The growth of the English constitution, which is the subject of this book, is the resultant of three forces, whose reciprocal influences are constant, subtle and intricate. These are the national character, the external history, and the institutions of the people.

English historians dispute and build up elaborate theories on the probable effect of the infusion of Danish or of Norman blood upon the character and institutions of the English. Is it not probable that this great infusion of foreign blood, part of it alien in every respect, is having some influence on our national character and institutions? It is at least a question which is worth careful examination with all the facilities that we have.

wholly to men, showed that its extremely crowded wards contained 1916 patients, two-thirds of whom, according to the sworn testimony of the medical superintendent, were of foreign birth, the ratio being more than three times greater than in the insane coming from the native population.

"The whole number of convicts in the courts of New York during the year ending October 31, 1886, for all grades of offences, according to the report of the Secretary of State, was 89,601, of whom, proportionately, the foreign-born were nearly three times greater than the native-born, and the records of its prisons, penitentiaries, workhouses, and jails, also show an undue ratio of foreign over native-born inmates." Report of Dr. Hoyt's address in the *International Record of Charities and Correction*, September, 1887.

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Character of the Immigrants.

There has been a great change in the character of the immigrants during the last few years. In former times, emigration to this country required considerable money and a good deal of energy. The trip was expensive and the country was comparatively unknown. It was only the more energetic and intelligent of the working classes who undertook the journey. These, of course, were the most desirable members of their communities; and the wonderful progress of the United States has been due partly to the select character of these new-comers. So true was this that the continental economists and statesmen have always looked with disfavor on emigration as taking away the cream of the community. The English economists, on the other hand, have generally favored it, on the theory that it not only relieved over-population but also benefited the home country by providing cheap food from abroad and making a new market for English manufactures. This view can easily be explained by the position of England as a free-trade nation which desired most of all an extension of its markets and which owing to the inventions of machinery did not fear a scarcity in its supply of labor. One English economist has advocated the other view, *viz.*, Thorold Rogers, who in his *Manual of Political Economy* (third edition, 1876) points out that voluntary emigration carries off the best part of the working population, leaving behind the weak, indolent and aged. He says:

> But voluntary migration generally takes away the best, the most thrifty, the most active, the most hopeful of the population. Such has been the case in the Scotch Highlands, and in Ireland. The same cause is at work, with increasing rapidity, in the English agricultural districts; . . . the colonization which relieves society is that of both sexes and of nearly all ages, and perhaps, except criminals, of all classes of society. Neither the labor nor the capital of this country is benefited by expatriating the cream of the working and the small-farmer classes — a contingency which we shall see fulfilled in a formidable shape when the working people in England are thrifty and a general exodus begins. . . . Enterprise and energy are valuable qualities in a people, and therefore are too good to lose, when they are most fully manifested.

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But this condition of things has changed very much during the last few years. It no longer requires extraordinary energy to make one's way to the new world. The facilities of transportation have increased wonderfully, the fare is very low, the agents of rival lines of steamers are in every town soliciting passengers, the voyage has lost its terrors, the country is no longer unknown and almost every one has a relative or friend or acquaintance here who urges him to come. All classes of the community are able to come and as a result it is more and more the lower classes that are coming. This movement is encouraged by colonization and charitable societies, whose object is to get rid of those who have failed in the struggle of life at home, and who thereby prove themselves to be the weaker portion of the community. There is abundant testimony both that the character of the immigrants has deteriorated during the last few years and that an effort is now being made to get rid of the less desirable elements of the population by sending them to America.

The National Association for promoting State-directed Emigration and Colonization describes the people whom it desires to aid as too poor to pay the small contributions demanded by the Canadian system of assisted emigration; these small payments having been originally designed as a means of preventing the absolutely indigent from coming to the colony. The circular of the society thus describes its clients:

> In East and South London, in many of our large cities and towns, and in some of the rural districts, there are accumulating rapidly-increasing masses of poverty-stricken, unemployed people. Perpetual anxiety, due to the terrible struggle for daily bread, enforced privation, overcrowding, miseries too many for enumeration, aggravated by corrupting influences surrounding the poor in all cities and manufacturing towns, are steadily, visibly sapping and ruining the physical constitutions and energies of deserving, struggling and helpless people, while discontent is leavening masses to whose doors education is now carried by the state. These people now becoming educated, see luxury all around them. Is it well that philanthropists, philosophers and statesmen should ignore the palpable danger of such a condition of things? The evil is being intensified yearly by the increase of population, and by the rapid though

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unavoidable introduction of labor-saving machinery in all departments of trade and industry. There is only one permanent remedy — Emigration.

The difficulty in this scheme of state-aided emigration, from the point of view of the colonies to which the emigrants are to be sent (among which we may count the United States, for the immigrants will drift over to us from Canada or will be sent directly to us if they so desire and we permit), is that the mass of those who are thus enabled to come will be drawn from the least desirable portion of the community, that is, from those who have failed to make a living at home. From the point of view of the mother country, this is of course the very element of which she is willing to rid herself; but it can scarcely be expected that the colonies will welcome such additions to their population. This difficulty has been keenly felt by the promoters of the movement in England, and they have strenuously insisted that it is not their intention to send over the vicious, the infirm or the indolent. Lord Brabazon writes:

> And here it would be well to make it clearly understood that the advocates of the state direction of emigration, as represented at all events by the National Association for promoting State-directed Emigration and Colonization, of which I have the honor to be chairman, do not propose that her Majesty's government should transfer the idle, the vicious, the ne'er do well, or the pauper from the slums of London to those of Melbourne or Toronto (as seems to be the idea of some of the opponents of state emigration), nor has it ever been proposed that any individual should be sent to the colonies either contrary to his or her desire, or without the concurrence of the authorities of these colonies, nor is there any intention of making a money present to any emigrant to enable him to proceed to the colonies.
>
> All that the association desires is that the British government shall, in conjunction with the colonial authorities, draw up a well considered scheme of emigration and colonization, by means of which *able-bodied and industrious men, who may not possess the means necessary for them to emigrate*, shall be provided with the means of emigrating with their families, or of colonizing, *under the strictest possible guarantee that the money shall be repaid with easy interest* within a certain number of years.[1]

[1] Lord Brabazon, State-directed Emigration, in *The Nineteenth Century*, November, 1884.

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If this program were strictly carried out, the resulting emigration would not be an injury to the colony receiving it, especially as Lord Brabazon proposes, in another part of his article, that each colony shall be represented on the Imperial commission and may withdraw its representative at any time, whereupon the flow of emigrants to that particular colony should immediately cease. It is safe to say that public opinion in the colonies, which is overwhelmingly under the control of the laboring class, would demand such withdrawal whenever the slightest inconvenience was felt or supposed to be felt from the influx of labor. In fact it is easy to imagine that, were such a commission once established, the colonies might demand that its functions should be extended to unassisted emigration, so that they might control the whole matter. In such a case the position of England with its surplus labor would be worse than ever.

But it is not easy to see exactly how the commission or the society is going to select only the able-bodied and industrious workmen. In voluntary emigration, the fact that the man has obtained money to emigrate is some evidence at least that he is able-bodied and thrifty; although the value of this evidence is being steadily diminished by the low cost of the passage and the remittances of friends, as Lord Derby pointed out in his speech in the House of Lords, March 29, 1884:

> Probably there was not a village in the country from which one or two persons had not emigrated, and these persons communicated with their friends at home; thus ignorance as to the advantages of emigration diminishes, while with more rapid and more complete communication the risks of an emigrant's life would tend to decrease.

But when the state advances the money, this test of the emigrant's fitness to emigrate is taken away, even if the money is nominally a loan; and one does not see exactly what is to take its place. The agent of the government or of the colony will be able to distinguish, perhaps, the really criminal, the actually infirm or crippled, and those who have been paupers; but he will not be able to discern whether a man is indolent, or lazy, or morally vicious and good for nothing. And if the government is to send only those who are industrious and thrifty, will it

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really afford relief to over-population? And will not its action be open to the objection urged by Professor Rogers, that the cream of the population will be expatriated? The difficulty is evidently felt by the members of the society, and they find it hard to satisfy both the home people who want to get rid of the poor and worthless, and the colonists who want only the good and industrious. The difficulty comes out very naïvely in the speech of the Earl of Carnarvon, in advocating the scheme before the House of Lords, in which he said:

> It was sometimes said that in sending out emigrants by the aid of the state you would choose the best men. He should be sorry to see the best men leave the country, but there was an intermediate class who were easily convertible into excellent workmen and good colonists.

But will the colonies be content with this newly defined "middle working class," when by voluntary emigration they may get the "upper working class" or even members of the "lower middle class"?

As a matter of fact the interests of the mother country and the colonies are antithetical in this matter. This has been shown very significantly in the single case where the British government has assisted emigration, — in the case of Ireland. In 1882–3 the Imperial government undertook to send emigrants to Canada.[1] The result of the experiment is described in a letter

[1] Numbers were sent also to New York and Boston. The New York commissioners say (Report, 1883, p. 13): "During the year 1883, in the months of June and July, many immigrants arrived at this port from Ireland whose passage was paid by the government of Great Britain. Some of these persons had, through the agency of the Poor Law guardians, been sent to this country directly from the poor-houses. The steamship *Furnessia* arrived June 25, with three hundred persons whose passages had been paid in this manner, and among them were found a large number of pauper immigrants, who had been inmates of poor-houses and who had no relatives or friends in this country able or willing to aid them, nor were they able to maintain themselves."

It was afterwards denied that these people were taken directly out of the poor-houses. But that makes little difference to us. They were to all intents and purposes paupers if they could not pay the small sum necessary to carry them to America. Even the fact that they had friends here able and willing to maintain them is not of much value to us, for the United States government cannot really test the truth of such a statement and no one can tell how long these friends will continue to be willing and able. See Correspondence of British government with U. S. government, cited below.

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addressed by the Secretary of the Department of Immigration, Ontario, to Mr. H. Hodgkin, of Mr. Tuke's Emigration Scheme committee, from which the following extracts are made:

It was deemed advisable to wait and see how the immigrants sent out last year under the auspices of the Imperial government would fare during the winter, before encouraging more of the same class to follow. So far their condition is not encouraging, as many of them are living on charity, and public feeling has been somewhat strongly expressed, in the public press and otherwise, concerning them. This remark really applies to the people sent out by the unions, but they are so closely associated in the public mind with those sent out by you, that it will be hard to find employment for either class next summer, as the farmers place but little value on their labor, and the people of the cities are afraid of laying the foundations of pauperism. What makes matters worse, a considerable number of families who went to the United States last summer have been sent back to Toronto, and have now to be supported by charity.

The Ontario government has therefore decided that it will no longer be possible to give assistance to any class of workhouse or "union" people either in the way of meals or railway passes. . . . .

The numbers of union or workhouse people sent out appear to the commissioner to have considerably exceeded the number of that class suggested by Major Gaskell, when here, as likely to be forwarded. They are also inferior as a class to those described by him. . . . The difficulties arising in selection are quite understood and appreciated. For these reasons it will not be possible any longer to continue the arrangement made with Major Gaskell in reference to the workhouse or union people who may be forwarded, and therefore the special privileges which they have been granted under that arrangement must necessarily be withdrawn.

I take the opportunity of stating, for the benefit of your committee, that while there is ample room in this province for all able-bodied persons of both sexes who are willing and able to work, yet these two features are essential to the procuring of a livelihood here, namely, ability and willingness to labor. Many persons in the older countries drift into the workhouse from their inability or their unwillingness to earn a livelihood by labor. It is impossible to provide a home here for such people.[1]

The unwillingness of the Canadians to receive this class of immigrants is altogether natural; yet it is this very class that

[1] Lord Brabazon, State-directed Emigration. Mr. Tuke answered Lord Brabazon in *The Nineteenth Century*, February, 1885.

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the British government desires to remove from Ireland.[1] This fact appears very clearly in the testimony before the recent commission on the working of the Land act of 1881. Many of the witnesses thought that state-assisted emigration was desirable and even necessary to relieve the congested districts; but they all agreed that it must be emigration of whole families. They complained that the present emigration carried off the young and strong, leaving only the old and weak, who hung on to the land which they were unable really to cultivate as it ought to be cultivated.[2]

State-assisted emigration will require to be carefully watched from this side of the water. It can accomplish its real object only by sending out persons whose worth to the country receiving them may well be questioned.[3] It is of course true that

[1] The latest attempt on the part of the British government was in 1887, when it paid passages of emigrants who "could satisfy the board that they have friends or relatives residing at the place to which they wish to proceed, and that such friends or relatives are willing and able to assist them to find employment and to maintain them until they can procure it." Seventy such immigrants arriving on the *Furnessia* were detained by the New York emigration commissioners, but released by Judge Brown on the ground that the commissioners had not detained them because they were "either convicts, idiots, lunatics or persons likely to become a public charge," but because they had been "assisted," and had thus gone out of the statute. See Correspondence respecting the Admission into the United States of Destitute Aliens and State-aided Immigrants [C.–5109], August, 1887; also *The New York Times*, June 1, 14 and 15, 1887.

[2] See evidence, question 18,542: "Then there is an unwholesome kind of emigration. The young and the energetic emigrate, but they still keep a grip on the land. They leave the old and sickly upon the land at home, and they really support them to a large extent by contributions." See similar answers to questions 14,453, 18,619, 23,622, 26,707.

[3] It is not possible to say exactly how much of this assisted emigration is going on. The consuls of the United States report that they are unable to discover any cases where the government directly assists paupers, diseased persons, or criminals to leave the country. In fact the central governments seem altogether disposed to discourage emigration and to meet the just demands of the United States that undesirable emigrants shall not be unloaded on us. Emigration is aided now by local communities, to whom the temptation is strong to get rid of persons who may become a burden on the poor rates by giving them a little financial aid at the right moment; by new countries, through so-called "assisted passages" (this form of assistance is constantly becoming less frequent); and by charitable individuals and societies. In England the first Poor law in 1834 allowed the tax-payers of a parish to deport paupers at the charge of the poor rate; but this power, by subsequent amendments, was transferred to the guardians of each Poor law district, in whose hands it still rests.

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persons who have had no chance in the old country may do well in the new; but it is also true that the character acquired at home may stick to them in the new domicile and make them only a burden to those who receive them. We are no longer in that vigorous early civilization when we could digest almost anything sent to us and when the very conditions of life here corrected and controlled the weaknesses of the immigrants. In a frontier life, the new-comer not only has a chance to begin anew but, in a sense, he is obliged to do so. He is thrown on himself and obliged to look out for himself. On the other hand, he is controlled by the rough justice which is dealt out between man and man. The code of morality may be rude, but he is obliged to conform to it. At the present time the conditions

They may deport any poor person, even though he may not have been in receipt of poor relief, provided he is over sixteen. The Local Government board, however, owing to the protests of the United States, feel themselves precluded from sanctioning emigration to that country at the cost of the rates. The only exception is where an emigrant is going to join a relative who is in a position to assist in maintaining him, and who has given evidence of willingness and ability to do so by remitting the whole or part of the passage money. In such a case the board will pay travelling expenses to the port of embarkation, but will pay nothing else. (Reports of United States Consuls on Emigration and Immigration, pp. 375 and 458.) In Sweden philanthropic societies for the relief of liberated criminals have paid the passage of such persons to America, but such practices do not take place now (p. 331). In Russia systematic efforts are being made to get rid of the poor and helpless Jews by forcing them to emigrate (p. 326). In 1884, 2011 and in 1885, 1746 immigrants, chiefly children, were brought to Canada under the auspices of charitable societies and individuals (p. 602). This is a form of assisted emigration of which we shall never have full statistics, and which we shall never be able to control.

How wide spread is this tendency to assist emigration, can be seen from such a book, as Karrer, Das schweizerische Auswanderungswesen. As early as 1819, over 2000 Swiss undertook the voyage to Brazil under the auspices of the Brazilian government. The cantons seized this opportunity to get rid of the poor and helpless. The greater part perished on the way or soon after their arrival. (Karrer, S. 3.) In 1844 the canton Glarus bought land in Wisconsin and established the colony New Glarus. (*Ibid.* S. 9.) In 1854 the Swiss Bundesrath warned the cantonal governments that the United States was complaining of the deportation of paupers, helpless persons and criminals, and advised them to be careful not to excite repressive measures. The Bundesrath, however, would use its influence that the restrictions should not be made too severe. (*Ibid.* S. 17.) In 1865 one-half of the Swiss emigrants were assisted by the cantons. (*Ibid.* S. 26.) From 1851 to 1879 the canton Aargau assisted emigrants to the extent of *fr.* 1,796,982. (*Ibid.* S. 233.) The new Swiss law of 1880 forbids the emigration of paupers and criminals. (For law and complaints of its breach, see *ibid.* S. 176.)

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are entirely different. The immigrant, if he has vicious or criminal tastes, finds in this country, especially in our large cities, exactly the same environment that he has come from. He may if he chooses take up the same life here which he has left on the other side of the water. If he is weak in resolution, the temptation will be strong to stick to the old familiar ways instead of striking out in a new and difficult path. It is for this reason that the character of the immigrant is of so much more concern to us now than it has been in times past. There is still abundant room; but we want good men and we want to guard against a process of selection that seems likely to send us poor men.[1]

There are indications from other sources also, that the character of the immigrants is deteriorating. All of this evidence is of an indirect kind, and necessarily so, for no statistics can take the measure of a man's character, and ours do not attempt to get at even the financial condition of the immigrants. The evidence must therefore be either information concerning the general character of the population from which the emigrants are being drawn, or the testimony of experts who are watching the movement. Of the first we have the following:

In Ireland it is well known that the western counties are the poorest, and those in which there is the most suffering at the present time. It is directly from these counties that the heaviest emigration is now taking place. In 1886 the average emigration of natives of Ireland was 12.2 to every 1000 of the population. The western counties are all above this average,

[1] It will be said, of course, that the number of paupers, criminals and persons unable to support themselves is trifling compared with the whole number of immigrants, and that they scarcely deserve notice. The number actually sent back home under the law of 1882 is small; but considering the difficulties encountered by the commissioners and the determined efforts of the steamship companies to land their passengers, the number is large. The figures for the port of New York are as follows:

NUMBER OF IMMIGRANTS RETURNED.

Year.	Total.	Insane.	Idiotic.	Blind.	Deaf and Dumb.	Enceinte.	Convicts.	Cripples.	Diseased.	No means of support.
1883	1,350	53	16	6	4	60	—	25	649	537
1884	1,144	63	—	4	5	103	—	21	—	948
1885	1,172	—	—	—	—	—	—	—	—	—
1886	997	70	20	1	—	88	8	18	355	437

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and in the following order, to every 1000 of population: county Clare, 20.3; Kerry, 20.2; Leitrim, 19.4; Galway, 16.1; and Sligo, 15.1. The only exception is county Mayo, where the proportion was only 11.2 per 1000 of the population. It is true that the heaviest emigration has always come from these counties, it being estimated that since 1851 a number of emigrants equal to 72 per cent of the average population has come from such counties as Clare and Kerry. But it is also true that since 1878 and down to 1883 (the last period of increasing emigration) the increase was greater in these counties than in the whole of Ireland. For while the emigration for the whole of Ireland was, in 1883, two and one-half times what it was in 1878, in Clare it was three times, in Kerry four and one-half times, in Leitrim four and one-half times, in Galway and Mayo, seven, and in Sligo nine times, what it was in 1878.[1] The statistics accordingly show that we are drawing at an increasing rate from an apparently inexhaustible sink of poverty, and that we are neither gaining a better class of immigrants ourselves nor relieving the distresses of Ireland.

In Germany we can also find some trace of the fact that the movement of emigration is extending itself from the better and richer parts to the poorer and less advanced parts. In Prussia, for instance, it appears that the movement has progressed regularly from the western provinces to the eastern. It reached its highest point at the middle of the fifties in the western provinces, at the end of the sixties in the middle provinces, and at the beginning of the seventies in the eastern provinces. So also the revival of emigration after 1878 seems to have come from the eastern provinces.[2]

Something of the same sort may be seen in the statistics of the whole empire. Out of one thousand emigrants from Germany during the years 1871 to 1879, there came, for example, from the provinces East and West Prussia, 117.3; from Pomerania, 109.8; from Posen, 91.3; from Hanover, 83.6; from Schleswig-Holstein, 57.4; from Brandenburg, 44.2; from Hesse-

[1] Emigration Statistics of Ireland for the year 1886 [C.–4967], 1887.

[2] *Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft*, V, 226

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Nassau, 35.8; from Silesia, 29.3; from the Rhenish province, 27.3; from Westphalia, 22.4; from the province Saxony, 18.1. If we compare the emigration with the population, which is the only satisfactory way of measuring the strength of the migratory tendency, we shall find the emigration heavier in these eastern provinces than in any other part of Prussia or of Germany. For instance, in 1881, — a year in which the emigration was heavy, — the proportion for Germany as a whole was 4.63 per 1000 of the population, and for Prussia 5.28 per 1000 of the Prussian population. But for Pomerania it was 16.68; for West Prussia, 16.84; for Posen, 13.08; and for Schleswig-Holstein, 10.76, per 1000 of the inhabitants of each of these provinces.[1] In Pomerania, West Prussia and Schleswig-Holstein, the emigration of 1881 exceeded the natural increase of the population. These eastern provinces (Pomerania, West Prussia and Posen) are the poorest of all Prussia, and probably the poorest parts of all Germany. They are almost entirely agricultural, and the land being held in large estates, the mass of the inhabitants are day-laborers (*Tagelöhner*). In Pomerania the large estates are more numerous than in any other province, comprising 57.42 per cent of the entire surface of the province. In Posen they comprise 55.57 per cent, and in West Prussia 47 per cent, of the whole land.[2]

The explanation of this increasing emigration from the poorer districts of Germany is, of course, the cheapness of transportation and the spread of information in regard to foreign countries. But it is not a cheering reflection for us who are receiving the immigrants, that they are coming more and more from the destitute and dependent classes rather than from the more enterprising and wealthier. It is true that German statesmen and to some extent German economists look with disfavor upon this emigration and would like to see it stop. But this feeling comes from a variety of causes which do not affect the question of the desirability of these immigrants for us. One thing is the evasion of military service represented by this emigration, which not only lessens the number of men available for the army, but seems to be unpatriotic and to throw a greater burden

[1] *Jahrbuch für Gesetzgebung, etc.* IX, 57. [2] *Ibid.*, S. 68.

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on those who stay at home.[1] Then in all questions since 1871 the feeling of national pride has played a great part. The Germans desire that the empire shall be the strongest nation in Europe: and, since the colonial fever has struck them, they see with special regret these thousands of Germans going off to be swallowed up and lose their German nationality in the United States. Even the economists are affected by this feeling, and overlook the increased wages and more comfortable subsistence afforded those who stay at home.

A similar movement may be discovered in the recent statistics of Italian emigration. The movement is steadily pushing from the better regions of the North to the poorer regions of the South. The reason for this again is cheaper transportation and better knowledge of foreign countries.[2]

[1] In 1872 and 1873, when the condition of the working classes was uncommonly good, there were over 10,000 processes annually on account of evasion of military duty by emigration. Schönberg, Handbuch der Politischen Oekonomie, 2. Aufl., II, 965.

[2] In 1886 the heaviest emigration to non-European countries was from the southern provinces: from Potenza, 10,642; from Salerno, 7824; from Campobasso, 6847; from Cosenza, 6749. Then come, at a great distance, the provinces of central Italy. (*Bulletin de l'Institut International de Statistique*, t. ii, 2ème livraison, p. 29.) The movement is due largely to the establishment of a steamship line at Naples. The increased importance of Naples as a port of departure for emigrants is seen in the following table. (Unfortunately this table includes both permanent and temporary emigrants, but probably the larger part of them are permanent.)

TABLE SHOWING PRINCIPAL PORTS FROM WHICH ITALIAN EMIGRANTS SAIL.

(From Statistica della Emigrazione Italiana per gli Anni 1884 e 1885, Roma, 1886.)

Absolute Numbers.

	1876	1877	1878	1879	1880	1881	1882	1883	1884	1885
Genoa	19,483	19,978	15,420	23,418	19,305	24,006	30,481	31,408	38,630	41,592
Naples	4,495	4,762	8,488	18,264	16,008	21,484	35,016	40,012	21,537	37,686
Other Italian ports	7,957	6,459	7,229	7,864	6,244	7,560	10,771	11,832	7,673	10,086
Marseilles	2,245	1,296	645	1,339	1,212	892	735	799	437	544
Havre	898	1,236	1,011	1,232	2,182	1,467	1,922	1,505	1,155	914
All other ports	1,006	1,251	2,810	1,283	518	535	664	293	450	537
Total	36,084	34,982	35,603	53,400	45,469	55,944	79,589	85,849	69,882	91,359

Proportionate Numbers per 100.

Genoa	53.99	57.11	43.31	43.88	42.46	42.91	38.30	36.58	55.28	45.50
Naples	12.46	13.61	23.84	34.18	35.21	38.40	44.—	46.61	30.82	41.27
Other Italian ports	22.05	18.46	20.30	14.72	13.74	13.51	13.53	13.78	10.98	11.05
Marseilles	6.22	3.71	1.81	2.51	2.66	1.60	.92	.93	.62	.60
Havre	2.49	3.53	2.84	2.31	4.80	2.62	2.42	1.76	1.65	1.—
All other ports	2.79	3.58	7.90	2.40	1.13	.96	.83	.34	.65	.58
Total	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00

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The character of the present immigration may be learned, in the second place, from the testimony of persons who are familiar with the immigrants and who have observed the movement during a series of years. Such testimony, unfortunately, is not easy to get in printed shape or in such shape that it shall represent anything more than an opinion. In fact in this whole question we are obliged to proceed, as they say in statistical science, by the method of symptoms. We cannot get exact data; we are obliged to take such evidence as seems to bear on the problem and draw conclusions from it. For instance, the reports of the consuls of the United States are on this point extremely vague and unsatisfactory. Most of them say that the emigrants come from the agricultural or laboring class, but they say very little as to the condition of this class. About the only exception is the description of certain cases of emigration such as that of the Slovacks from Hungary, where the condition of the people is so strikingly inferior that it attracts universal attention. But this particular immigration is not large enough as yet to excite alarm, although these Hungarians seem to be but little superior to the Chinese in civilization.[1]

On this side of the water we have also some testimony, but it is all of the indirect kind. For instance, in the reports of the different bureaux of labor statistics we have some symptoms of the effects of this immigration and the way in which it is felt by the laboring classes. Thus the Connecticut commissioner speaks of the French Canadians in the following way:

> The Canadian population of Connecticut has been subject to several unfortunate influences which have made it less enterprising and independent than that of other states. It has had no newspapers of its own. It has shown comparatively little enterprise in works of permanent value to the community. The trouble at the bottom of the whole matter has been, that the Canadians of Connecticut have in general not come here of their own notion, and with their own resources, but under the influence of the employing companies, if not under actual contract with them. These companies have thus a hold upon the settlers which has prevented any feeling of independence which might otherwise have developed. . . .

[1] See Reports of United States Consuls on Emigration and Immigration, p. 50.

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It is the custom to speak of the French Canadians as if they were a worthless race. Such is by no means the case. The virtue of industry they have in the highest degree. They are far from being difficult to deal with. In economy of food, . . . they teach us a lesson from which we might learn a great deal. The trouble is their economy does not stop at a point where it would be desirable. Their standard of life is one which it would be a serious misfortune for the American laborer to imitate. Their wants have been reduced to a point where low expenses no longer indicate economy, but lower civilization.

Of the Italian immigration, which is just beginning to affect Connecticut, the commissioner speaks as follows :

The Italian immigrants come almost entirely from the southern districts of Italy. They come in rudely organized bodies, not as a rule under contract from the employers themselves, but under the leadership of certain of their own nation, who arrange concerning their employment and pay. The Italian's object in coming to this country is simple. He wishes to stay here until he can save two or three hundred dollars, and then go home again. This sum amounts to a competence in his own country, and enables him to pass the remainder of his days as a man of wealth and established position. . . .

The task which he has before him is not a difficult one. . . . His expenses he is able to reduce to a minimum. In matters of personal comfort he is the reverse of exacting. He can bear an infinite amount of crowding, without apparently interfering with his enjoyment of life or sense of decency. His diet is simple ; it is even cheaper than that of the French Canadian. While the Canadian relies largely on peas and other cheap and nutritious vegetables, the food of the Italian consists largely of stale bread, stale fruit, and stale beer. The Italians use these things at a point where they cease to be marketable. Of fruit in particular, they save large quantities at a point where it has almost no commercial value, applying a kind of drying process of their own, and afterwards cooking the dried fruit from time to time as it is wanted.[1]

[1] Report, 1885, pp. 60 ff.

The Italians do not seem to be favorites anywhere. The consul of the United States in Marseilles, France, writes: "There are in this city more than 54,000 Italians, who hold toward the native laboring classes a relation somewhat similar to that of the Chinese in the Western American states. The Italian laborer is quite as industrious and even more economical than the Frenchman. His wants are so few and simple that he can exist upon a small percentage of his earnings, and in a competition of wages he underbids the native laborer. In several parts of this district there have been heard recently sharp protests, attended in some instances by violence, against the Piedmontese, who swarm across the frontier and seek employment in mines and

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The New York commissioner also made an investigation in 1885 of imported contract labor and found several cases where such labor was regularly imported and furnished to railroads or other parties at wages much less than the American laborer was receiving. A contractor in Buffalo admitted that he furnished 400 foreigners during the last year to railroads and other corporations. They were principally Italians, Swedes, Poles and Germans. They are in about the same condition of life and have the same habits as the Italians already described. Most of them come simply to accumulate a few hundred dollars and then return to their native country. It is the question of Chinese labor over again.

In like manner the New Jersey commissioner complains that small squads of these Italians and Hungarians are employed at different points in New Jersey, being furnished from an agency in New York city. The trouble has even reached the Western states, where it might be supposed there was room for any number of laborers. The Kansas commissioner refers to it both in his first and in his second report; as do also the Iowa and the Wisconsin commissioners. The latter asserts that during the summer of 1886 Wisconsin was flooded with Italian railway workers. They earn from $1.25 to $1.50, and live on from 10 to 16 cents a day. They are under the control of padrones who receive the above sums from the railroads but often pay the laborers less. In March, 1886, Wisconsin was flooded with circulars from an Italian Labor and Construction company of New York, offering to let men for "tunneling, grading, mining, breaking stone, laying ties, repairing washouts,

tanneries and upon public works; but these manifestations have been promptly suppressed and denounced as uncivilized and dangerous to French working-people in other countries." Consular Reports, p. 71.

A German author speaks of the immigrants in the Argentine Republic: "Die Spanier, Portugiesen und Italiener verlassen übrigens nur selten die Stadt. Während die Erstgenannten sich in der Regel als *changadores* (Dienstmänner) oder *serenos* (Polizeileute) verdingen, halten sich die Italiener grösstentheils im Hafen auf und beschäftigen sich mit dem Verladen bei den ankommenden und abfahrenden Schiffen. Diese Einwanderer mit den obigen Beschäftigungen (die *serenos* nicht ausgenommen!) bilden durchschnittlich die gefährlichste und gefürchteste Bevölkerungsclasse der Stadt [Buenos Ayres]." Robert, Zur Auswanderungsfrage, S. 29, Wien, 1879.

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laying water and gas mains, street cleaning, shovelling snow," or to take such work as sub-contractors "at figures that will repay inquiry." "Contractors and employers will find that the authority of this company over the men it furnishes is of special advantage in all dealings it may have with them." Public sentiment in Wisconsin is very generally aroused against the employment of such labor — and, in fact, in favor of some restriction on further immigration. The bureau of labor received the following answers to a circular of inquiry. Out of 523 firms of employers, 70 were in favor of total prohibition and 393 of partial restriction. Out of 25,236 employees who answered the question, 4059 were in favor of total prohibition, 18,510 in favor of some sort of restriction, and only 2667 against restriction.

It is hardly necessary to pursue this part of the inquiry further. It is only the extreme cases that excite attention,[1] but it is certain that the character of the immigrants who come to this country is not improving. There is abundant evidence on this point, both abroad and in this country; and there are some cases of immigration which may even excite apprehension. Emigration is no longer culling and bringing to us the cream of the working classes, the men of energy, thrift and enterprise. It is almost all of it assisted, either by remittances from this side of the water or by the energy of business enterprise which reaps the profits of transportation. The process of natural selection which the difficulties of the voyage formerly brought about, no longer works. Practically any one can now go; it depends only on the disposition; and when it comes to a question of disposition it is as likely to be the indolent, vagrant and vicious who will go, as the thrifty, industrious

[1] The newest specimen of undesirable immigrants are the Arabs, forty-two of whom were landed in New York by the *Chateau Léoville*, December 24, 1887. They were at first rejected by the commissioners, but the steamship company afterwards presented affidavits from twenty-eight of them that they were blacksmiths, carpenters, masons, *etc.*, and that they had from $50 to $100 each. The company bound itself in $15,000 to take care of any of the immigrants who should become a public charge within twelve months, and the Arabs were let in. Two years ago the same steamer brought sixty Arabs and upon their being rejected here landed them at Halifax, whence they found their way overland into the United States. — *The New York Times*, Jan. 3, 1888.

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and energetic. For the country receiving the immigrants it is a misfortune that this natural selection has fallen away. To go on receiving them, without check or control, is like attempting to guide a heavily loaded wagon down hill, with the wheels greased and the brakes off, because it had been done before successfully with the brakes on. When the immigration came in a moderate stream and with natural velocity, so to speak, it occasioned no alarm. But now the movement is accelerated both by social influences, such as the desire of European communities to get rid of a portion of their population (and naturally of the least desirable portion), and by individual economic motives, such as the efforts of transportation companies to fill up their ships. An East End of London pauper who leaves for Canada because he has his passage paid, a new suit of clothes given him, and money put in his pocket by "Mr. Tuke's committee" or some charitable Lady Cathcart; or a Prussian peasant who sails from Hamburg for the United States at the solicitation of the agent of some transatlantic steamship line who gets a commission for every passenger he secures, — such men can scarcely be said to be following out natural economic impulses leading them to better their condition and thus indirectly to benefit the world at large.[1] We might as well look these facts fairly in the face, and treat the problem in the same cool commercial spirit as the men who are directing the movement for the sake of commercial gain.

RICHMOND MAYO SMITH.

[1] By the Swiss law of 1880, every person who engages in the business of forwarding emigrants is obliged to register himself, paying a fee of *fr.* 50 and making a deposit of *fr.* 40,000 as security for observing the regulations established by law. These agents are then allowed to appoint sub-agents, for whom they are responsible. On the 1st of January, 1882, there were 9 chief agents and 184 sub-agents. On the 31st of December, 1885, the number of chief agents had increased to 11, and of sub-agents to 402! Among these sub-agents there was the most active competition for the purpose of securing emigrants. Complaint was made especially that tavern-keepers were employed as sub-agents, and used their opportunities to persuade persons to emigrate. The motive with such persons is of course purely mercenary. See Karrer, Das Schweizerische Auswanderungswesen, S. 134, 139, 152, 161, 164.

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THE MICHIGAN SALT ASSOCIATION.

WITHIN the last half century, the amazing comparative growth of capital as a factor in production; the combinations of workingmen arising from their forced association in manufacture according to modern methods, and the ensuing discontent — or rather, the frequent and increasingly emphatic expression of discontent — with their lot on the part of the workingmen, as combination has increased their sense of strength; the combinations of capitalists and the startling revelations of power afforded by such organizations as the Standard Oil company and the coal syndicates of Pennsylvania, — all these things have lent to the study of combinations among either capitalists or workingmen, or of co-operative unions of the two, an especial interest. More frequently the subject has been studied with reference to workingmen, the advantages and disadvantages to them; but it seems no less desirable, from the standpoint of the economist at least, that combinations among capitalists, either for purposes of protection against unreasonable demands of workingmen or for their own interests as producers, should be studied; and that the investigation should cover the influence of such combinations on the consumers as well as upon the capitalists themselves.

The story of the Standard Oil company has been told more than once, in words eloquent with the conviction of the danger threatening our government and civilization from the growth of such corporations. The consumers of anthracite coal throughout the United States during the past two years, have needed no publicist to tell them that some powerful influence has been brought to bear upon the price of this product. Although far less in power than either of the combinations mentioned, the Michigan Salt association, from the extent of its influence over the price of an article of food so common and so necessary as salt, as well as from the magnitude of its operations and its

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great and apparently increasing power, seems to be a fit subject for a study of this kind. The extent of the influence of the association may be noted, when we consider that Michigan produces more than 40 per cent of all the salt manufactured in the United States, and that, of the Michigan product, not far from 95 per cent will be sold by the association during the coming year. In short, speaking generally, the price of the salt consumed in all the Northern states west of Pennsylvania and New York, until we approach those bordering on the Pacific ocean, is the price set by the managers of this association. It is the purpose of this article to give a short sketch of the history of this combination of manufacturers, with that of others which preceded it; to describe its plan of organization and its work, and to estimate the influence which it has exerted and that which it can exert on the price of salt.

The early settlers of Michigan had learned from the Indians of the existence of many salt "licks," or springs, in different parts of the state, and it was thought even by them that there was an opportunity for the growth of a great industry in its manufacture. In 1838 Dr. Houghton, the state geologist, called the attention of the legislature to these facts, and suggested that an appropriation be made for the sinking of test wells. The time was propitious for such a request. The newly adopted constitution had declared: "Internal improvements shall be encouraged by the government of this state"; and the governor had been authorized by the ambitious first legislature to borrow on the credit of the state the sum of $5,000,000, to constitute an internal improvement fund.[1] From this fund $3000 were at once appropriated; the next year $15,000 more, and small sums in succeeding years. While salt was found, the wells were not sunk deep enough to yield brine in paying quantities.

In 1859, an act was passed exempting from taxation all property used in the manufacture of salt and offering a bounty of 10 cents per bushel on all salt made in the state. A corporation, the Saginaw Salt Manufacturing company, was formed the same year in East Saginaw to put down a well and engage in

[1] Cooley, Michigan, ch. xiv. [American Commonwealth Series.]

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the manufacture of salt. So little was known, even by the board of directors and officers of the company, regarding the character of the work, that it was necessary for a committee to visit the Onondaga salt works to learn what buildings, machinery, and tools were necessary for boring the well. But by February 7, 1860, the directors felt warranted in making a report to stockholders, declaring the work a success. In March the well was completed; another one was immediately put down; and manufacture began in July. The works were thrown open for inspection July 4. In this first year, 1860, about 4000 barrels of salt were manufactured.[1]

As soon as it became known that brine of paying quality and quantity was to be found in the valley, capital was rapidly invested. In 1862, 243,000 barrels were made, and in six years there were engaged in the manufacture of salt in the Saginaw valley, sixty-six different companies with an investment of nearly $2,000,000.

TABLE I.

Annual Salt Product of Michigan, 1860–1886.

Year.	Barrels.	Year.	Barrels.
1860	4,000	1874	1,028,979
1861	125,000	1875	1,081,865
1862	243,000	1876	1,462,729
1863	466,356	1877	1,960,997
1864	529,073	1878	1,855,884
1865	477,200	1879	2,058,040
1866	407,077	1880	2,676,588
1867	474,721	1881	2,750,299
1868	555,690	1882	3,037,317
1869	560,818	1883	2,894,672
1870	621,350	1884	3,161,806
1871	728,175	1885	3,297,403
1872	724,481	1886	3,677,257
1873	823,346		

This table shows, in the falling off of the yearly product, 1865–7, the result of the rapid and in many instances ill-advised

[1] Statistics relating to the Saline Interests of Michigan, by S. S. Garrigues, Ph.D., State Salt Inspector; Lansing, 1881.

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investment of capital. Under the conditions obtaining at the time, unrestricted competition soon drove the weaker companies to the wall. In those days, the extent of the salt-producing territory and the methods of manufacture were less well known, and the business was much more of a natural monopoly than now. Under these circumstances, the solution of the difficulty was evident: combination was indicated and combination soon appeared. In a statistical summary of the leading products of the Saginaw valley, published by *The Saginaw Daily Enterprise* in 1867, we read: "This interest [salt] is somewhat under a cloud at present through the evil influence of speculation and inconsiderate management." Then, farther down the page come, as one might expect, the words: "At least two-thirds of those [blocks] now running turn in their production to the Saginaw Salt company." Thus, as early as 1866, six years only after the industry was started, we find that many of the manufacturers were uniting their interests so far as the sale of the product was concerned.

Soon, from individual agreements the leading firms came to something more stable and far-reaching in its influence. On the 16th of April, 1868, the articles of association of the Saginaw and Bay Salt company were adopted. The first year of its existence, this association handled four-fifths of all the salt shipped from the Saginaw valley. Its benefits to the manufacturers, as well as to the consumers — so far, at least, as the quality of salt is concerned — were at once recognized, and are clearly set forth in the *Statistics of the Saginaw Valley* for 1868:

> The operations of this company have been completely satisfactory, and the organization is unquestionably of great benefit to the salt manufacturers who have availed themselves of the advantages it offers. It has, so far as its line of operations has extended, brought about the one thing needful, a uniform system of inspection, and introduced system, order and reliability into a business, which, without such general regulations, has in no quarter ever proved remunerative.

In spite of the competition of New York and the Ohio river (relieved in part by an agreement with the Onondaga Salt

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company which will be considered later), the business grew with remarkable rapidity, and the association ran smoothly till 1871, when the vigorous efforts of some of the members opposed to the management became of serious moment. The real merits of the controversy, which became bitterly personal, several letters of a violently abusive character being published, it is hard to determine. On the one side, charges of mismanagement, even of dishonest practices, were made against the officers of the association by Duncan Stewart, president of a salt manufacturing company; on the other, Stewart's dissatisfaction was said to have been caused by the refusal of the managers to ship salt by a line of boats in which he was interested, at rates above those offered them elsewhere. For our purpose it is enough to know the result. In the *Annual Statement* of the business of the Saginaw valley for 1871, we find it in compact form:

> In salt, the season of '71 may be quoted as of extra activity both in manufacture and sale. Early in the season it became evident that a commercial rivalry had been excited which could not end but by the going to the wall of one of the parties engaged in it. Assuming the shape of individual antagonism to a corporate company, it became at an early day evident that many of the manufacturers who are members of the Salt association, would take sides with the opponents of the association, and as a result fully one-fifth of the entire salt product of the valley, which under ordinary circumstances would have been handled by the association, was purchased by the firm of J. L. Hurd & Co., of Detroit, at prices in advance of those realized by those who remained in the association. Since the close of navigation, the association has resolved to suspend operations for the present, and each manufacturer will, during the season, be left free to realize as best he may on his products.

It is significant, and somewhat surprising to note that by the determined efforts of one man, the association was forced to suspend operations, even though, as has been reported, this man was compelled to destroy his own financial standing to bring about such a result. Table I, again, furnishes us with an interesting comment upon this financial battle. For 1872 the production of salt in the state is more than 3600 barrels less than that of

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the year preceding; whereas both 1871 and 1873 show a gain of about 100,000 barrels.

Five years passed before a thoroughly effective union could again be made. Smaller organizations were formed to sell salt for groups of manufacturers, notably the Saginaw Salt association and the Michigan Salt association; but the competition was fierce, prices went steadily down, and the weaker companies found themselves in need. At length, after low and declining prices throughout the year 1875, the time seemed ripe for another organization which could control the sale of a large proportion of the Michigan salt, and through this added power of union both secure a saving in the expenses of sale and transportation, and either compete more effectively with the New York and Ohio river manufacturers or force them into a union which should control the whole American product. January 8, 1876, J. E. Shaw, president of the Michigan Salt association (a smaller combination of manufacturers), issued a circular address to the salt manufacturers of Michigan, calling a meeting to be held at Bay City, January 20, to effect such an organization, if it should be possible. The address exhibits in an almost pitiable light the situation of the manufacturers, and urges strongly the need of organization. Mr. Shaw declared:

> The old adage, "in union there is strength," is true wherever you apply it, and in manufacture of salt there is no exception. To secure this *union* with its attendant *strength* is the object of the Michigan association. This is the object it had in view when it was organized, and this is the object it has in view to-day. That the organization has remained inactive, is attributable to the fact that it could not secure control of a sufficiently large *percentage* of the state product to warrant [aggressive action], a few manufacturers declining, for reasons best known to themselves, to enter the association. And what was the result? Salt has depreciated in value, dropped steadily down, until to-day it has no market price on the Saginaw river, and is quoted at only $1.27 in Chicago, and $1.00 in Toledo. That the experience of '75 will be that of each succeeding year, unless something is done to check the general demoralization, can not be gainsaid. The oldest manufacturers of the Syracuse, Kanawha and Ohio districts, tell us that their experience, dating back forty years in some cases, has *always* been this: "*Organized*

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we have prospered. 'Unorganized we have not." This is the experience which we have been buying and paying dearly for. . . . The trouble lies in the *marketing* of the product. Each man has taken care of (or attempted to) his own product. . . . The other salt districts of the United States are now organized, and are ready to treat with us (as soon as we have an association) relative to fixing and maintaining prices, dividing the territory, and making other arrangements which will inure to the advantage of the trade. But we must first be organized. They cannot treat with individuals.

The appeal was successful. The meeting was held; others followed; and in April the Saginaw Salt company and the Michigan Salt association were consolidated and other outside firms were taken in, so that from the beginning more than 85 per cent of the product of the state was controlled. The new association took the name of The Michigan Salt Association.

When in 1881 the association expired by limitation, it was immediately re-organized under the name of The Salt Association of Michigan; and, in 1886, again expiring by limitation, it was again organized under its former name. The three associations have been, in fact, the same association under different names; the president and secretary elected in 1876 still hold their offices, and the business is conducted on the same principles, slight changes only having been made in the articles of association and by-laws.

The organization of the association, effective as it is, is very simple. Less than a page contains the articles of association, which declare that the purpose of the association is "the manufacture and dealing in salt," and the "transportation of its products to market"; that the amount of capital stock shall be $200,000, divided into $25 shares, of which the amount actually paid in is two dollars per share; that its affairs shall be managed by a board of nineteen directors (of whom not more than one shall be from the same firm or company of manufacturers) chosen by the stockholders; that the offices for transaction of business shall be in East Saginaw and Bay City, and that the business shall be carried on in the salt-manufacturing counties; and, finally, that the association shall exist as a corporation for the period of five years.

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From the by-laws, we learn that the stockholders shall be manufacturers of salt, and that the number of shares taken by any one "shall not exceed one share of the capital stock for every barrel of the average daily capacity of his manufactory on a fair estimate" — an excellent provision to prevent manipulation of stock to the detriment of the real business.

An annual dividend of seven per cent payable semi-annually on the amount of stock actually paid in, together with the losses, costs, and expenses incurred in handling and selling, including the state inspection fees, is deducted from the proceeds of sales before division is made.

That the business management of the association may be as personal and direct as possible, the president is given the general supervision of the entire business, subject to the general rules laid down by the board and the executive committee. A secretary and a treasurer with the usual duties of such officers are appointed by the board, and also an executive committee, which has general control and is charged with the duty of auditing all accounts, inspecting all books, *etc.*, at least once a month. The officers receive a stipulated salary. The organization, it will be seen, is such that the executive efficiency of a single head is combined with all proper checks to guard against any abuse of trust on the part of any of the officers. The fact that the chief officers of the association have held their positions since its organization, and the continued prosperity of the association, never greater than now, reflect the greatest credit on the management as well as on the authors of the plan.

The relations of the association with the members, however, constitute the main point of interest. A contract is made *every year* with each manufacturer who wishes to become a member, in accordance with article vii of the by-laws, which reads as follows:

> Every manufacturer, in becoming a member of this association, shall execute and deliver to it a contract for all salt manufactured by him or them, or a lease of his salt-manufacturing property, including all apparatus and appurtenances thereunto belonging, for the purpose of manufacturing. Such contract or lease shall be for the term of one year, or

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until the dissolution of the association, and shall not impose any restriction that will prevent the manufacture of salt at any and all times.

Each and every contractor shall manufacture salt for this association on the terms and conditions as follows:

That he will make salt solely on the association's account, of the best quality of the kind manufactured by him, according to the conditions of his contract or lease.

The contracts provide, further, that in case the manufacturer sells salt on private account, he shall pay to the association ten cents for every barrel so sold; that the contract, however, is not thereby forfeited, but remains in force throughout the stipulated time.

While this gives full control of the product to the association, and effectually prevents all competition among the manufacturers, the provision that no restriction shall be imposed which will prevent the manufacture of salt at any and all times, operates powerfully against any raising of prices to exorbitant rates such as might perhaps be secured otherwise, if combination with the New York and Ohio river manufacturers could be effected. The reason that this clause stands in the by-laws, and that the practice of the association differs so entirely, on this point, from that of the anthracite coal syndicate and other combinations of like character, is found in the peculiarity of the manufacture. A great part of the larger salt blocks are run in connection with saw-mills; and the slabs, sawdust, *etc.*, from the mills are used for barrels and fuel. Not only would this material, if not so used, be a dead loss, but its removal would be a source of expense. Manufacturers so situated could never expect a rise in the price of salt sufficient to compensate them for the loss that would be incurred in stopping their works; and consequently they will not join the association unless assured that they will not be subjected to such a loss and inconvenience in their more important business.

Another provision of great advantage, especially to the manufacturer of comparatively small capital, is that which provides for an advance of money on all the salt inspected each month, whether the salt is taken from the bins and sold or not, if the

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manufacturer wishes such advance and is willing to pay interest on it. The rate of advance and the rate of interest are fixed by the board and may be changed from time to time; but liberality is always shown both in the amount advanced and in the rate of interest. The advance has been lately 25 cents per barrel in the bins, or 45 cents per barrel if packed, with interest at 7 per cent. Money may be loaned in the state at 10 per cent, and this rate is often obtained on small sums for short periods of time.

The salt becomes the property of the association as soon as inspected; but the manufacturer is still bound to deliver it free of charge on the wharf or on the cars, as the association shall direct, and to sustain all losses by fire or otherwise, if they occur before such delivery. The association agrees on its part to remove within a reasonable time all the salt manufactured.

Reports are rendered every month to each member of the association, giving not merely his own special account, but all the sales, with the average price both gross and net, and all the necessary expenses with principal items — average freight, commission, home and storage charges, *etc.* All the members receive credit at the same average rate, and for an amount proportioned to their manufacture as shown by the inspection — a provision greatly to the advantage of the poorly situated companies. The receipts of salt for each month are sold and accounted for separately.

The association keeps its agents — most of them selling on commission, but some on salaries — in Chicago, St. Louis, Cincinnati, Cleveland, Columbus, Duluth, Detroit, Milwaukee and other places, wherever this is warranted by the amount taken.

It will perhaps be well, further, to notice some attempts that have been made, since the manufacture of salt in Michigan became a leading industry, to form combinations of all the leading manufacturers in the country, and thereby to secure from consumers a price limited only by the competition of foreign salt and the lessened demand consequent on the rise in price.

Not many months after the Saginaw and Bay association was formed (April, 1868), the managers began negotiations with the

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manufacturers in New York, and in the Ohio river district. This first attempt, instead of resulting as had been hoped, led, from a rather peculiar combination of circumstances, to an even fiercer competition than had existed before.

The president of the association gives the facts in his report of 1870 to the board of directors. The association in Michigan succeeded in making terms with the Onondaga Salt company, but failed with the Ohio river association, because the latter could not control the product of their district either as to quantity or price. Some new works at Pomeroy, it seemed, had refused to join the Ohio river association. The other manufacturers of that district, having sold *all their product* to the association *at a fixed price*, increased their output and flooded the market. As the association could not control the works at Pomeroy, there was a general cutting of prices in which, of course, Michigan and New York were compelled to join. As the eloquent writer puts it: "It was a Donnybrook Fair in the salt market. When you saw a head, you hit it." The immediate result was, naturally, detrimental to all the works. The final outcome was that the outsiders on the Ohio river joined the association, and a change in the character of the contract with the former members enabled that association to control the *quantity* as well as the price in that quarter. This being done, it became an easy matter to make the combination general. The Washington correspondent of *The Chicago Tribune* gave an account of the pool which is corroborated by other papers and by officers of the present Michigan association. The Syracuse, the Ohio, and the Saginaw and Bay companies entered into an agreement at Detroit, March 22, 1871,

> To make a pool of all the salt in the market in the territory bounded by the lakes on the North and East and by the Ohio river on the South, the western and southwestern boundary to be entirely discretionary, according to the prices of freights to places whence orders for this article might be sent. This discretion was confided in a board, there appointed, which consisted of one representative from each of the three salt corporations, who are also empowered to fill orders and forward all supplies, to advance or reduce prices as occasion may require. The percentage

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of the pool, and all future supplies and profits under existing arrangements were agreed to as follows: Syracuse, 40 per cent; Ohio river, 32 per cent; Saginaw, 28 per cent.[1]

The prices fixed were $2.00 per barrel for Chicago, Cincinnati, Cleveland and Detroit; $2.10 for Toledo; and $2.40 for St. Louis.

Reference to Table II (see page 92) will show the effect of the "Donnybrook Fair" period, as well as the rise in price consequent on the pool in 1871. The Chicago prices of the first of January show the effects of both movements, as do also the average prices at Saginaw. Gold prices show a less decrease, but emphasize the rise in 1871–2. At the close of 1871, as we have seen, the Saginaw and Bay association, having lost control of a large proportion of the Michigan men, could not uphold their end of the bargain. As they were not bound, however, to take *at a fixed price* any large product, no such immediate cutting of prices followed as had been seen the year before.

A somewhat more firmly controlled pool was made ten years later to cover about the same territory. A special arrangement was made with the Ohio river manufacturers, the exact terms of which cannot be given; but they are of little consequence, since by far the larger part of the amount was sold by the other companies.

The territory covered was bounded on the east by a line drawn north and south through Buffalo, and on the south by the Ohio river, as before. The importance of the Michigan product, relatively speaking, is worthy of special notice. In 1871, as we have seen, Michigan put in 28 per cent; Ohio river, 32 per cent; and New York, 40 per cent. In 1881, Michigan put in $\frac{15}{17}$ and New York $\frac{2}{17}$, while some special arrangement regarding a small fixed number of barrels, or a fixed rate, was made with the Ohio company. The management of the pool, as before, was confided to a committee selected from both companies. The contract went into effect May 1, 1881, and was terminated March 1, 1882, a month's notice having been given by the Michigan association in accordance with the terms of the contract.

[1] *The Chicago Tribune*, April 4, 1871.

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The effect of the pool on prices is shown in Table III (page 94). The cause for the breaking of the pool, and the following sudden lowering of prices, is stated by the managers of the association to be simply that the markets, especially Chicago, had become over-stocked with salt, and the Michigan association felt the need of having full control there. They broke the pool, and "slaughtered the market."

Though other combinations have been talked of at times, no other has been made.

Such, in brief, is the history and the plan of organization of the Michigan Salt association. It remains to consider somewhat more fully its economic effects.

First, much credit must be given the association for the improvement of the quality of the salt manufactured in the state. The necessity for a rigid system of inspection to keep up the quality of the product and prevent injury to the reputation of Saginaw salt in the market, led the old Saginaw and Bay Salt association to appoint a committee in 1868 to draft a law meeting the wants of the salt manufacturers. As early as 1865 a system of local inspection had been adopted by a number of manufacturers,[1] but something more rigid was required; and this bill, which became a law in March, 1869, was the result. As amended in 1875, it remains to-day in the statute book, and to it is doubtless due in large measure the superior quality of the Michigan salt.

The inspector is appointed by the governor and senate, is paid a stated salary by the state, and is, of course, entirely independent of the manufacturers. The state is divided into as many districts as seem to him practicable for the thorough carrying-out of the work, and all salt made is carefully inspected, a deputy inspector visiting each block *every day* for this purpose. The early association deserves the credit of securing this effective law. Some manufacturers, it is true, attempt at times to evade the law and to pass off an inferior grade of salt for the best; but the larger manufacturers, and of course the Salt association, are interested in having the

[1] S. S. Garrigues, Saline Interests of Michigan, p. 32.

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grade of salt kept up, and therefore assist the work of inspection as much as possible.

The question which next suggests itself — that of the influence of the association upon prices and profits — cannot be answered so briefly. In many of the markets it is clear that the association is really without competition as long as it keeps its prices reasonably low, or perhaps we had better say, only moderately high. The effective competition of New York — or even that of any Michigan manufacturers who are "running wild" — is practically out of the question. It must not be forgotten that the average cost of manufacture in Michigan is considerably less than in New York; and though westward-bound freights are low, they are still worthy of consideration. Of course no single manufacturer could escape competition to so great an extent, since his neighbors would be his strongest competitors. Again, by means of its thorough organization and the daily reports sent to the home office by agents in all important markets, the association is able to make sales not merely more advantageously as regards price, but also with a much less expense in the way of commissions, travel, number of agents, *etc.* Besides this, the freedom from care and responsibility and the certainty that the product is in hands that will make the most of it, is worth not a little to the average manufacturer. The last-named item alone, that of greater intelligence and knowledge of the market, should receive more consideration than the manufacturer usually gives it.

Another point of advantage is this: by means of its large sales and long experience, the association can reduce losses from bad debts to a lower figure than could individual manufacturers.

Further, when the sales are all made from a central point, with a right to deliver from any of the manufactories at will, it is clear that a large saving in transportation can be made. Contracts will be filled always from the works most favorably situated. Vessels and cars can be secured at such times and places as will enable them to carry at the lowest rates. The average rate of freight is thereby much lessened.

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The plan of advancing a large part of the value of the salt to the manufacturer before the salt is sold, enables him to carry on his business with less capital than would be required if he were not a member of the association.

The first consideration, the abolition of competition, comes solely to the benefit of the manufacturer; the others mentioned are advantages from organization which lessen the cost of production, — including sales and transportation, — and may benefit either the manufacturer, through greater profits, or the consumer, through lower prices, or the benefit may be divided.

A study of prices before the formation of the association, and after, would seem to show that while the saving had chiefly benefited the manufacturer, as was to be expected, the consumer had not suffered seriously.

TABLE II.

Price of Salt per barrel in Saginaw and Chicago.

Year.	Saginaw.	Chicago.	Year.	Saginaw.	Chicago.
1860, Jan. 1,		$1.50	1875, average,	$1.10	
1861, " "		1.75@2.00	1876, Jan. 1,		$1.35
1862, " "		2.25	1876, average,	1.05	
1863, " "		2.25	1877, Jan. 1,		1.40
1864, " "		2.10@2.15	1877, average,	.85	
1865, " "		2.75	1878, Jan. 1,		1.10
1866, " "		2.35@2.40	1878, average,	.84	
1866, average,	$1.80		1879, Jan. 1,		1.10
1867, Jan. 1,		2.40@2.45	1879, average,	1.02	
1867, average,	1.77		1880, Jan. 1,		1.45
1868, Jan. 1,		3.25	1880, average,	.75	
1868, average,	1.85		1881, Jan. 1,		1.05
1869, Jan. 1,		2.60	1881, average,	.83⅔	
1869, average,	1.58		1882, Jan. 1,		1.35
1870, Jan. 1,		2.25@2.30	1882, average,	.70	
1870, average,	1.32		1883, Jan. 1,		1.00
1871, Jan. 1,		2.05@2.10	1883, average,	.81	
1871, average,	1.46		1884, Jan. 1,		1.15
1872, Jan. 1,		2.35@2.40	1884, average,	.75⅔	
1872, average,	1.46		1885, Jan. 1,		.95
1873, Jan. 1,		2.40	1885, average,	.70	
1873, average,	1.37		1886, Jan. 1,		.95
1874, Jan. 1,		1.90	1886, average,	.66	
1874, average,	1.19		1887, Jan. 1,		.80
1875, Jan. 1,		1.65	1887, average,	.57½	

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Table II shows that, while the prices have on the whole tended downward since 1876, the time of the formation of the association, the rate of decrease has been somewhat less rapid. On the other hand it must be noted that the prices in the earlier years are reckoned in legal tender notes. This causes the prices during the sixties, and the rate of decrease during the years preceding resumption, to appear greater than they really were, though a slight check in the rate of decrease can be seen even when prices are reckoned in gold. The influence of the war, too, in pushing the price to what was really an abnormal height, must not be overlooked. The improved methods of manufacture would naturally cause a lowering of price, and it is impossible to accurately judge the influence of all the factors. The earlier prices, of course, were not determined to any marked extent by the Michigan product, as the manufacture in the state began in 1860, and was not really on an even footing with New York for several years. It seems probable, however, that the association checked somewhat the tendency toward a lower price, and, if so, the consumer is so much the worse off. This difference in price cannot on the whole have been much, the chief advantage to the manufacturer coming, probably, from the lessened cost of putting his product on the market.

It is, again, quite probable that without the association, the larger dealers would take part of the profit which now goes to the manufacturer, and that the consumer would be forced to pay as much as now, and even more. Certain it is that large dealers in Chicago, Toledo, Cleveland and Sandusky, express themselves generally as opposed to any association, even when they have been appointed agents. At present they receive a low commission per barrel of salt sold; whereas, before the formation of the association, they could buy salt in the summer months when it was very plentiful, and store it till after the close of navigation, and then the few larger dealers in such an important market as Chicago, by uniting, could advance the price enough to reap a handsome profit. This practice, which was common, came to the benefit of the few dealers, while neither the manufacturer nor the consumer received any share.

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TABLE III.

Association Price of Salt each month, from June, 1877, to November, 1887.[1]

June	1877	$0.80¼	Dec.	1880	.72	June	1884	.74
July	"	.79	Jan.	1881	.74	July	"	.72
Aug.	"	.72½	Feb.	"	.77	Aug.	"	.71
Sept.	"	.74½	Mar.	"	.77	Sept.	"	.70
Oct.	"	.74	April	"	.76	Oct.	"	.70
Nov.	"	.75	May	"	.76	Nov.	"	.70
Dec.	"	.80	June	"	.76½	Dec.	"	.69
Jan.	1878	.73	July	"	.81½	Jan.	1885	.68
Feb.	"	.70	Aug.	"	.88⅓	Feb.	"	.69
Mar.	"	.71	Sept.	"	.92½	Mar.	"	.68
April	"	.76	Oct.	"	.94	April	"	.66
May	"	.75	Nov.	"	.95	May	"	.63
June	"	.77	Dec.	"	.95	June	"	.62
July	"	.77	Jan.	1882	.94	July	"	.60
Aug.	"	.76	Feb.	"	.99	Aug.	"	.60
Sept.	"	.70	Mar.	"	.99	Sept.	"	.65
Oct.	"	.70	April	"	.71	Oct.	"	.70
Nov.	"	.70	May	"	.72	Nov.	"	.72
Dec.	"	.70	June	"	.70	Dec.	"	.73
Jan.	1879	.72	July	"	.70	Jan.	1886	.71
Feb.	"	.80	Aug.	"	.70	Feb.	"	.72
Mar.	"	.83	Sept.	"	.69	Mar.	"	.71
April	"	.82	Oct.	"	.69	April	"	.70
May	"	.80	Nov.	"	.69	May	"	.69
June	"	.80	Dec.	"	.70	June	"	.68
July	"	.86	Jan.	1883	.70	July	"	.66
Aug.	"	.88	Feb.	"	.70	Aug.	"	.65
Sept.	"	.90	Mar.	"	.70	Sept.	"	.65
Oct.	"	.94	April	"	.70	Oct.	"	.63
Nov.	"	1.02	May	"	.75	Nov.	"	.60
Dec.	"	1.05	June	"	.80	Dec.	"	.60
Jan.	1880	1.05	July	"	.80	Jan.	1887	.60
Feb.	"	1.08	Aug.	"	.80	Feb.	"	.60
Mar.	"	1.09	Sept.	"	.80	Mar.	"	.57
April	"	1.05	Oct.	"	.81	April	"	.55
May	"	.85	Nov.	"	.83	May	"	.55
June	"	.72	Dec.	"	.83	June	"	.53
July	"	.72	Jan.	1884	.83	July	"	.51
Aug.	"	.72	Feb.	"	.83	Aug.	"	.57
Sept.	"	.72	Mar.	"	.83	Sept.	"	.58
Oct.	"	.72	April	"	.83	Oct.	"	.60
Nov.	"	.72	May	"	.80	Nov.	"	.62

Table III, giving the average monthly prices of the association (the net prices paid to manufacturers), shows, on the whole, a decline; but one not so great after all, when one considers

[1] Prices given are for the sales of the preceding month.

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the general tendency of prices of all manufactured products. Moreover, there are several times when the price has gone up enough to counterbalance in great part the decline.

Besides the statements of reliable manufacturers regarding their profits, a comparison of the table of prices with the table showing the amount produced in different years in Michigan gives us still further reason for the belief that the association cannot secure prices which make the profits at all extraordinary. A distinctly marked rate of increase (not absolute increase) or falling off in production usually follows, especially in later years, like changes in the average yearly price. One should not lay too much stress, however, upon such similarities, as there are many other determining factors.

Many of the advantages to manufacturers of such an association, especially the freedom from competition with one's neighbors, cannot be secured unless a very large proportion of the manufacturers of the state are united. The association aims, of course, to have as many join as possible; and in case of necessity it does not hesitate to "squeeze" a manufacturer whose block is so situated that he has no need of the association, and whose competition is troublesome. This brings to our notice the disadvantage it might be to some manufacturers to become members. As the prices, freight charges, *etc.* are arranged for the whole association, the manufacturer who has a ready market near at hand could oftentimes realize somewhat more by remaining outside.

In the year 1886, about 600,000 barrels of Michigan salt were sold by outsiders. The amount was large enough to make a real competition that could be severely felt by the association. At length, the managers issued the order to their agents to meet any rates, however low they might run. Table III shows the gradual decrease, as the fight went on. In August, 1887, the unprecedentedly low price of 50 cents per barrel was reached. In the same month manufacturers representing some 350,000 to 400,000 barrels, yearly product, joined the association; and we note the consequence in the rise of price to 57 cents for that month's product, while the prices for

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the following three months (58, 60 and 62 cents) still show the upward tendency.

It has been impossible to obtain with any degree of accuracy the data which would indicate the influence of the competition within the state; namely, the times of the accession of different manufacturers to the association and of their withdrawal from it. As the contracts are made yearly, some enter the association and others leave it every year. In one or two instances, however, the effect of such changes is marked. Reference to Table III shows, in 1880, a sudden decline in price from $1.09 to 72 cents within three months. This is probably to be explained by the fact that "a large number of the manufacturers went out March 1, and that they commenced cutting prices, and we [the association] concluded to more than meet them."[1] The sudden drop in prices in the early part of 1882 followed the breaking of the pool with New York. The rise in August, 1887, is due, as noted above, to the accession of a number of manufacturers. It should rather be called the setting back of the price toward that obtained before the cutting to force the manufacturers in. Doubtless, too, many of the other changes noticed are to be ascribed to the same causes.

When a barrel containing 280 lbs. of fine salt of the first quality can be bought in the Chicago market at a price ranging from 75 to 85 cents, there is not likely to be very much complaint on the part of consumers, nor much talk about "monopolies," "coalitions for robbing the people," *etc.;* and yet the Michigan Salt association is sometimes attacked as a monopoly, and it doubtless has some of the features of one. Adolph Wagner is strongly inclined to recommend the manufacture of salt by the state, on account of the danger of so common an article of consumption being monopolized by the manufacturers and dealers.[2] The advisability of state control seems to him, on the whole, greater than in the case of the coal industry. Our experience with anthracite coal companies within the past few years has been such that we may well note the circum-

[1] Letter from the secretary of the association.

[2] Wagner, Finanzwissenschaft, Bd. I, §§ 251, 254.

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stances of our salt industry in this regard. Is it likely or even possible that a really oppressive monopoly in this article can be made?

The salt-producing territory of the United States, while widespread, is nevertheless so limited that competition in manufacture is by no means so free as in other lines where the raw material may be shipped in at low rates; *e.g.* cotton, or shoes. This makes it much easier for two or three combinations to unite and control the whole product; and we have seen that in two instances, at least, for short times, such a union was made to control "disputed territory" — an expression, by the way, which in itself emphasizes the limited nature of the competition.

The coal and petroleum industries have been able to secure complete control by the aid of the railways. Aside from the fact that the capital invested in salt is much smaller, it would be much more difficult for the associations to control the means of transportation. The territory is more widely scattered, and is, besides, much of it adjacent to the great lakes. Such a control as the coal syndicates exercise, would require a controlling influence over all the larger railways east of the Mississippi, and over the boats on lakes Huron, Michigan and Erie, as well.

A further matter to be noted is the large import of salt. In 1880 some 38 per cent of all the salt used in the United States came from abroad. Though part of this is of a different quality and does not enter into competition with the American product, yet a large part of the sea-board traffic in salt, and the larger part of the salt used in the South, is controlled by the importers. The salt is brought as ballast, so that the cost of transportation to our coast is practically nothing. It is the cost of transportation from the sea-board that keeps it out of the territory now controlled by the Michigan association. It may be readily seen that our protective tariff on salt would need to be far higher than at present, before our manufacturers, even if all in the United States were united, could command prices comparable, when considered with reference to the cost of production, to those obtained on anthracite coal. The character of the combinations, too, would need to be much stricter.

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Without such combinations, considering the Michigan association as it is, the New York competition is enough to keep the price from becoming exorbitant. Add to this the above-mentioned fact that the association has no power to limit production, and the fact that new wells are being sunk continually, whose owners can be forced to join the association, if inclined to remain outside, only by a tedious and expensive fight on prices, and the dangers to consumers from the association seem slight. Doubtless, the manufacturers who have been in effect forced into it, and who feel that without an association in the state more profit could be made, are inclined to think that such a combination is oppressive. These manufacturers, however, form but a small proportion of those in the state.

The conclusion to which one must come, then, regarding the influence of the association is this: it is probable that the average consumer is but slightly affected, though it is possible that he has to pay a little more for his salt than would otherwise be the case; it is certain that, with the exception of a few who are uncommonly well situated, the manufacturers are decidedly benefited by the association. Certain it is that most of them are well content, and that the association never stood firmer than it does to-day.

J. W. JENKS.

Addendum. For much valuable material regarding the history of the salt interest of Michigan, I am indebted to the courtesy of Mr. W. R. Burt, and Mr. D. G. Holland, president and secretary, respectively, of the Michigan Salt association. Besides the records of the association, these gentlemen put into my hands some scrap-books, without which I could not have obtained many of the facts regarding its early history. Mr. Holland, too, was kind enough to take time to tell me and write me facts regarding the management of the association which could not have been learned elsewhere. Acknowledgments are also due to Mr. L. H. Gould, assistant salt inspector, and to the salt manufacturers and dealers who have kindly furnished me information.

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PARTY ORGANIZATIONS AND THEIR NOMINATIONS TO PUBLIC OFFICE IN NEW YORK CITY.

THE city of New York has undergone many transformations, political and social, since the blissful reigns of Wouter Van Twiller, William the Testy and Peter the Headstrong. It is not my purpose to describe the many changes, though these few pages may emphasize to the readers of *A History of New York* the difference between politics of the days of Diedrich Knickerbocker and those of the present time.

Constitutional government tends to become a rule of parties; and where this phase of government has prevailed longest, as in England, this tendency is most marked. And just as the political history of the United States is included in the rise and fall of the Federalist, the Democratic, the Whig, and the Republican parties, so is that of the city of New York in the development and disappearance of their local organizations. As a result of the extension of the elective principle to judicial and administrative as well as political offices, party rule in America has become "machine rule;" and our state and city history affords a graphic illustration of this development. The officers elected for the government of New York city alone are seventy in number: *viz.*, the mayor, the comptroller, the president of the board of aldermen, one alderman in each of the twenty-five districts, a sheriff, a county clerk, a register, four coroners, a district attorney, six justices of the superior court, six justices of the court of common pleas, six justices of the city court, one district court civil justice in each of the eleven judicial districts, a recorder, two judges of general sessions, a city judge, and a surrogate. In addition to these the city voters choose at the same time their national and state officers: the electors for president and vice-president of the United States

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and nine congressmen, the governor, secretary of state, comptroller, treasurer, attorney-general, state-engineer and surveyor, the judges of the supreme court and court of appeals, and twenty-four assemblymen and eleven senators, elected according to districts.

The importance of the nominating machinery in America receives especial emphasis when this endless catalogue of public officials, dependent on party nomination and chosen by popular election, is brought into contrast with the list of elective offices in the European constitutional states. Neither in England, France nor Germany, do the electors vote for candidates for any executive, administrative or judicial office; election is confined to the legislative offices. In London, Paris and Berlin, the voters choose by election the city aldermen and, in the two last mentioned cities, the members of some unimportant councils. They vote also for the city representatives in the national legislature: in London, for the members of Parliament; in Paris, for those of the Chamber of Deputies; and in Berlin, for those of the Imperial Diet and also for members in the Prussian Diet. Public elections are not held in these cities to fill any other offices, national or local.

Political institutions are the outgrowth of political conditions. The New York party organizations and their method of nominations to public office are clearly the result of the number and the importance of the elective offices; and they have no counterpart in London, Paris or Berlin. A national party organization, based on state, county, and ward or district associations, all equally well disciplined, each with a permanent executive committee and a permanent chairman, usually the party dictator, — this, the American party organization, nominating and electing all national, state, and local officers, is unknown in England, France or Germany. Political clubs, devoted to their party principles, exist in these European countries, and they are the only form of permanent party organization. They advocate doctrines dear to the Liberal or the Conservative, in England; to the Bonapartist, the Monarchist or the Republican, in France; to the Conservative, the National-Liberal, the Ultramontane or

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whatever else the party man styles himself, in Germany. They support and encourage party principles, not individuals; although, at times, they use their influence in nominations and lend their assistance in the campaign to the party candidates. No club established merely to nominate candidates to public office could take root in those countries, where the elections are infrequent and the elective offices few, any more than a party organization created solely to nominate candidates for the presidency could flourish in America. These clubs are to be found in the principal cities; their basis is not party suffrage, but club membership; though partly social in purpose and spirit, the conditions of admission are political; their connection with other associations of the same party, if there be any, is very slight.

In England, the leading clubs are located in London. The best known are the Carlton, the Conservative, the Junior Carlton, St. Stephens, the Reform, the Devonshire and the Liberal. Nominations, though frequently made by the clubs or at their suggestion, emanate at times from other sources; it may be from self-nomination, from family influence in the rural districts, or from a conference of party voters in the cities.

In France, the political clubs represent about the same influence and activity; they are to be found chiefly in Paris. The members of the Chamber of Deputies, in groups called *comités*, determined by party sympathy and neighborhood relations, usually make the nominations and manage and conduct the national elections.

In Germany, the party organism is almost equally undeveloped. The leading political parties have clubs in the more important cities. They frequently suggest available candidates, and the names suggested are submitted to public meetings, whose function is understood to be ratification rather than discussion. Except perhaps at the annual reunion of the party leaders, known as the *Parteitag*, held for the adoption of the party platform, conventions and delegates are unknown. Even at these meetings the various clubs are not always, nor as a rule, officially represented; the leading members of the party throughout the empire assemble there without formal call or

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credentials. This is the German substitute for national conventions and delegates.

Neither in Paris nor in Berlin nor in London are there any permanent political associations which arrogate to themselves the right to make all nominations to public office; nor is there any absolute uniformity in the method of the selection of candidates. The political clubs, in so far as nominations are made by them, represent aristocratic rather than democratic influences. Mr. Bright and Mr. Chamberlain, advocates of radicalism in party organization as well as in party policy, desired to establish an association to be based on the suffrages of the voters of the Liberal party and not merely on club membership. But their avowed purpose was "to submit to the federated associations political questions and measures upon which united action may be considered desirable." Even their elaborate plan was intended to define and ascertain the party principles, not to select the party candidates.

The early forms of party activity in the United States, and especially in the state and city of New York, were equally simple. Nominations were usually made by legislative caucus: by congressmen for national elections, and by state legislators for state officers. But at that time the political constitution of the state and city was totally different, and much more in harmony with the institutions of the European states of to-day. For more than thirty years after the adoption of the constitution of the United States, the only municipal officers chosen by election in New York city were the aldermen and the constables. All other local and all state officials, except the governor, assemblymen and senators, were appointed by the council of appointment. Early in this century, Aaron Burr, and later Martin Van Buren and the Albany regency, used the enormous powers of this council to influence the action of the caucus. This interference and the radical changes made by the constitution of 1821, which widened the suffrage and largely increased the number of elective offices, strengthened the demand of the people for a more representative nominating body. In that year, with the rallying cries of "no more legislative nomina-

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tions," "the people must be heard," the convention plan was introduced. The object of the change was to popularize and purify party action. The convention, as Thurlow Weed said, was intended to realize "the policy of nominations emanating directly from the people instead of from the legislative caucus."

Nominations to public office are still made by conventions; and the tendency to enlarge the number of elective offices prevails. In New York city, as we have seen, seventy officers are chosen by popular election for the government of the city alone. Under these circumstances the question is pertinent: Do nominations to public office emanate from the people?

There are in the city of New York to-day three powerful political organizations, of which any two can command the vote of the majority of the voters on election day. These are Tammany Hall, the County Democracy and the Republican party association.

Tammany Hall is the oldest organization in American politics. For more than eighty years it has been a powerful political factor. Revolts against its despotism have given recognition at different times to Mozart Hall, Apollo Hall, the Young Democracy, Irving Hall, and the County Democracy, as the representative associations of the Democratic party. They were established to combat the misrule of Tammany; and all, in time, appeased by her caresses and favors, came back to their ancestral home, conscious of guilt and of folly. And full of maternal love for her erring sons, Tammany has folded each in its turn to her bosom.

The County Democracy, established in December of the year 1880, protested, as had the other Democratic organizations, against Tammany misrule, and made promises of unrelenting warfare against its supremacy. But already in 1882, by the combined support of Mr. Edson as the mayoralty candidate, was the reconciliation between these two wings of the Democratic party begun, and to-day it is almost complete. These two nominally independent bodies, standing on the same platform of national principles and pursuing the same ends in municipal

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government, are now in fact but one organization. They both understand the importance of the maxim: "United we stand; divided we fall."

The Republican voters, because of their fewer numbers, have at no time given recognition to any but the regular organization.

Tammany Hall, the County Democracy and the Republican association control all elections in New York city. The machinery of each is very much the same. At first simple in structure, it has attained by gradual growth its present highly developed form; and to-day the party organizations may justly lay claim to that perfection which the Duke of Wellington ascribed to the House of Commons in the year 1831. To him any reform of the Parliament seemed sacrilegious; and he piously declared that he would, if creating a representative assembly, copy exactly the plan of the House of Commons. There are many political Dukes of Wellington to-day to whom the party organizations in New York city seem as faultless.

But in spite of this perfection there has been much friction in the working of the complicated political machinery of the parties, and especially in their primary elections for the selection of candidates to public office. The abuses have become matters of public discussion. In these discussions, the controversy has become centered upon the manipulation of the voting rolls, the qualification of voters, the secrecy concerning the time and place of voting, and fraud and irregularity in the count — the most glaring evils in our primary elections.

What primary elections in New York city at last came to be, is clearly reflected in documentary, now historical, evidence. Writing of the Republican primaries (about the year 1880), one of the party leaders stated, in a letter to Chester A. Arthur:

> The rolls are deceptive. . . . In one district half the names of those on the rolls are not known in the district. These bogus names afford a convenient means for fraudulent voting. The rolls of many of the districts are full of the names of men not Republicans, and are used by the managers to perpetuate their control of the associations. On the other hand, desirable members, good Republicans, who have an absolute

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right to become members, are excluded. Sometimes this is done by a direct rejection, but oftener by a refusal to vote upon the names presented.[1]

The recognition of these conditions led to the reorganization of the party in the year 1883.

The primaries of Tammany form a chapter in our recent local history. Their control, as is well known, was one of the means whereby William M. Tweed made himself party autocrat, and finally city boss. His candidates for judicial office and his many other official hirelings owed their nominations to packed primaries. When the opposition to Tweed began to show itself, a paper was circulated by the Young Democracy, summoning Tweed to convene the "general committee" of Tammany Hall to test the relative strength of the opposing factions. A call was finally issued; but, finding themselves decidedly in the minority, the leading spirits of the Ring closed the hall and prevented the assembling of the committee.

Tammany also reorganized after Tweed's downfall, but the corruption of the Tammany primaries continued, and was so generally conceded and recognized that the County Democracy association received a ready and large support from the Democratic voters, when it declared[2] it to be its purpose "to base its organization on the action of the mass of the voters of the party and to take it out of the control of the halls."

It is clear that before 1881 nominations, even though made by party conventions and not by legislative caucus, did not always "emanate directly from the people." Have the recent party reorganizations freed the voters from the control of the party managers, and bestowed upon the people an actual nominating power?

In these three organizations — Tammany, County Democracy and the Republican — the party voters are assembled to elect, not the party candidates, but delegates to nominating conventions. According to the Republican and the Tammany plans,

[1] The Independent Movement in New York, p. 102. (G. P. Putnam's Sons, N.Y., 1880.)

[2] In the Plan for Organization adopted by the Committee of One Hundred, March 23, 1881.

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the assembly district, and according to the County Democracy plan, the election district, is the unit for primary voting. The primary ballots contain the names of candidates, not for public office, but for the nominating conventions of the party. The list of such candidates is not ordinarily a brief one; on the contrary, the ticket is covered over its entire length and breadth with names of proposed delegates.[1] At the last Tammany primary election in the twenty-first assembly district, 116 delegates were selected, by less than 50 voters, to find *one* suitable candidate from that district for state-assemblyman. The delegates were elected at 104 West 47th street, to assemble at 104 West 47th street.

In some of our states, the indirect primary election has been superseded by a direct vote for the party candidates for local office; but in New York the rules of the party associations have not been modified in this direction. They have been changed from time to time, but only to give further assurance that the qualified alone shall vote, and that all votes cast at the primaries shall be counted. To attain these ends, the by-laws of the Republican association were radically amended in 1883. Many of the old tests of membership were abolished, and additional safeguards to preserve the purity of primary elections were introduced. The constitution and rules of the county committee now provide, as to membership in the assembly organizations, as follows:

> The fundamental test of the right of any person to be enrolled, shall be that he is a qualified voter of the assembly district in which he proposes to enroll, and that he voted at the last election for electors of president and vice-president of the United States for the electors of the Republican party, or if he has since the last presidential election voted at a state election, he must have voted for the candidates of the Republican party for state officers.

As only members duly enrolled are entitled to vote, this provision, if heeded, would be found liberal enough to enable

[1] At the last election, the Tammany primary tickets contained, in the twenty-first assembly district, 351 names; in the nineteenth, 630 names. The Republican primary ticket of the twenty-first assembly district contained 138 names.

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all in sympathy with the party to enroll and vote, and sufficiently definite to exclude all not entitled to these privileges. The rules further provide that the roll of membership shall be accessible at all convenient times to any enrolled voter for inspection and challenge; that proper notice by advertisement of all elections shall be given; that all elections shall be by ballot, the candidates for all offices to be filled being voted for on a single ballot, printed on plain white paper; that the polls shall be kept open from three o'clock to ten o'clock P.M., and in any district where the enrolled voters shall exceed 700, from eight o'clock A.M. to ten o'clock P.M. under certain conditions; that the inspectors shall provide two ballot-boxes in each district at every primary election; that they shall proceed in the canvass of ballots in the manner required by law for canvassing at state elections in this city; that they shall publicly announce the result, and shall before leaving the place of meeting certify the same in duplicate, and within twenty-four hours deliver one copy of the returns to each person or delegation elected, and file the other with the secretary of the county committee; that they shall also file with the secretary of the county committee the poll-lists and oaths taken by the inspectors as required by law, and that each party interested in the election may be represented by two watchers. These provisions, though found to be somewhat faulty in application, are immeasurably superior to those of the superseded constitution and would be sufficient, if observed, to insure an honest count.

The by-laws of the Democratic Republican General Committee of the city of New York, better known to the community as Tammany Hall, provide as follows:

> The committee on organization shall be charged with the consideration of all matters relating to organization of the Democratic party, the call of primary elections, and the conducting of primary, general, special and charter elections; *and shall in their discretion have power of revision and substitution of all nominations hereafter made by conventions, called by the general committee, or any district committee of this organization, whenever the honor, preservation and integrity of this organization shall require such action.*[1]

[1] Article viii, § 7.

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The italicized clause shows how truly "Democratic Republican" is the spirit which pervades Tammany Hall. Equally significant is the fact that these by-laws recognize no elections except those for members of the assembly district committee. As to these, it is provided that "the Democratic voters in each assembly district *acting in unison with Tammany Hall*," shall choose by ballot delegates to the assembly district committee.

The crudeness of these rules for the conduct of the Tammany elections, is plainly apparent by their contrast with those of the Republican association. There is no suggestion in them as to an enrollment of voters, and no qualification or restriction as to voting is imposed, except such as can be found in the phrase "acting in unison with Tammany Hall." The alien as well as the minor may be in unison; in practice any one can rise into the exalted state of being "in unison," and attain the privilege of voting — if he is willing to vote the right way. Neither are there to be found in these by-laws any provisions for inspectors, for voting by ballot, for a count, nor for official returns of the result.

The rules of the County Democracy are to be found in its *Plan for Organization*. They provide that

> all Democratic voters who voted in the election district in which they reside at any primary election duly called under this plan, held in the district during the next preceding or the current year, shall be members of the election district association of the district; that the secretary of each association shall furnish a list of names and residences of the members and officers of the association to the secretary of the assembly district committee; that it shall also be his duty to have a correct list of the members voting at all primaries held in the district; and that public notice, not less than four days before the holding of such primaries, shall be given, in one or more of the principal Democratic newspapers, of the time and place for holding such primary meetings.

The provisions for notice are complete, but the plan is fatally defective in a failure to provide for an enrollment. Voting at the primaries of the County Democracy is not restricted to the members of the election district association, as it is to those of the assembly district organization in the Republican party.

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Any one in sympathy with the principles of Democracy may vote. "In sympathy" has all the precision of "in unison." As to the conduct of elections, it is ordered that if, fifteen minutes after the time appointed for a primary meeting, twenty members have not appeared, the meeting may be organized with a less number present; that two tellers shall be chosen from among the persons entitled to vote at the primary election, each primary voter being entitled to vote for one teller only; that the election shall take place in open meeting; that each person offering to vote shall state his name and residence, which shall thereupon be announced by the chairman and be recorded by the tellers; that in voting for convention delegates or committee members, each person shall state for whom he votes or shall hand to the judge an open ballot; that the polls shall be kept open for one hour and until every person then present and entitled thereto has had an opportunity to vote. The chairman of the committee and the tellers form the judges of election; they shall canvass the vote and announce and certify the result; duplicates of the result shall be filed, one with the secretary of the assembly district committee, another with the secretary of the election district association. These provisions are almost as exhaustive as those to be found in the constitution of the Republican county committee, and, it might be thought, are adequate to secure an honest vote and a fair count, and truly to represent "the action of the mass of the voters of the party and to take it out of the control of the halls."

The founders of the County Democracy recognized the faults of the Republican and Tammany systems. They saw that membership in the Republican organizations was given or denied capriciously, and that the nominal qualifications became in practice "acceptability to the assembly leader"; and it was equally clear to them that the Tammany plan, which resulted in a gathering, out of a voting population of as many as ten thousand, of only one or two hundred, not known to be either voters or Democrats, was inadequate. In the County Democracy plan, the election district was adopted as the unit of party organization. It was hoped that its associations — in many parts of

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the city there is one election district to every street block — would, as in neighborhood guilds or town meetings, automatically exclude all but those entitled to vote, and that this arrangement would avoid at once the close corporation form of the Republican associations and the indiscriminate voting of the Tammany primaries. Another innovation was the substitution of the open for the secret ballot. The benefits anticipated from this change have not been realized. The public influence and pressure at primary elections, which it was hoped would impress the voter, if required to declare his vote openly, with a feeling of responsibility, emanates in practice from the party leaders. Instead of securing independence, the declared vote produces a more thorough servility to the leaders, captains and lieutenants.

To complete and strengthen these by-laws of the party associations and to secure honest party elections, the legislature of this state has passed several acts. The law of 1866 was the first effort at governmental regulation. The act of 1882 regulated the duties of inspectors, and imposed penalties upon illegal voting and the bribery of voters and delegates. In the year 1887 a more comprehensive plan of primary control than any heretofore attempted became part of our law. The act of 1887 is limited in its application to cities of over ten thousand inhabitants. It provides that the primary elections shall be presided over by inspectors *selected according to the rules of the party organization*;[1] and that the candidates or a majority of them may appoint one elector as watcher at the poll, on whom is conferred ample power to protect their interests. The law defines the necessary qualifications of electors to be *those prescribed by the regulations of the association holding the primary*,[2] provided that no such regulation shall authorize electors of opposite political faith to vote, and that no person shall be qualified to vote unless he is twenty-one years of age, a citizen of the United States, and a resident for ten days in the ward

[1] The Tammany by-laws make no provision for inspectors of election.

[2] The regulations of Tammany Hall and the County Democracy, it will be remembered, qualify all who are "in unison" or "in sympathy."

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or district in which the primary is held. The polls of the primaries shall be open, between 9 A.M. and 9 P.M., *at such hours as the political organization shall prescribe,*[1] provided at least one hour is allowed for the holding of the poll. The inspectors are required to keep a poll-list of the name and residence of each person voting at the election, and they shall immediately after the completion of the canvass publicly announce the vote thereat, and shall, within eighteen hours,

file the returns in the office of the city clerk where such election is held, except that in the city of New York the same shall be filed in the office of the register of said city, and in the several cities of the state other than the city of New York in which the county clerk's office is kept, the same shall be filed in the office of the county clerk.

This act contains abundant provisions penal in nature, to command respect and obedience. But by its terms it is not applicable to the political organizations which may desire to avoid its provisions; and these organizations are, of course, most in need of it. The scope of the act is thus limited:

The provisions aforesaid in reference to voting by ballot, the time for holding open the polls, the taking of an oath by the inspectors required by section 6, the use of a ballot-box at such primaries, the keeping of a poll-list of the electors voting and the filing of returns need not be observed *unless the rules and regulations of the organization calling such primary shall require an election by ballot,* or unless twelve hours before such primary is appointed to be held, five qualified electors of the district shall serve upon the presiding officer or secretary of the general committee of the political party, organization, or association, in the city in which such primary election is to be held, or upon the chairman of the district committee of such district, a notice or demand in writing signed by them stating that they require the aforesaid provisions to be observed at such primary, or unless such primary meeting shall itself by a vote of those present, resolve to observe such provisions, then in such case such provisions shall be strictly and fairly observed.

The rules and regulations of Tammany, as we have seen, require voting by ballot only for the election of delegates to the assembly district committee, not for the election of delegates to nominating conventions. Neither is election by ballot made

[1] The Tammany by-laws prescribe no time.

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obligatory at the primaries of the County Democracy; on the contrary a declared vote is preferred. The rules of the Republican party make voting by ballot at its primary elections necessary. The law is therefore binding in all its details on the Republican party, but not at all on the County Democracy. It affects those Tammany elections which are held to choose delegates to the assembly district committee and, of its other elections, those at which the committee on organization shall prescribe the use of ballots. This committee ordered for the late elections that "each ballot shall be without indorsement," implying the use of ballots.

Since the passage of the act of 1887, each of the political organizations has held several elections. Tammany and the County Democracy each held an election early in September to choose delegates to the Democratic state convention; another in October to select delegates to conventions for the nomination of candidates for the November elections; and a third late in December for the annual election of the association officers. The Republican party has held two elections: one in September to select delegates to the state convention, and another in October to select delegates to nominating conventions. The records of the register's office in our city reveal the extent to which the law has been operative, and they afford us an opportunity to give an unanswerable reply to the question whether the New York city primaries, after their many reorganizations and with the existing state control, are honorably conducted and representative in character.[1]

The Republican party has filed returns for its two elections from all the assembly districts except the eighth and eighteenth. The leaders of these two assembly districts, who are very practical politicians, did not file any returns, thereby violating the state law. The official records of the Republican elections are presented below in contrast with the Republican voting strength on election day.

[1] The law was not observed in the other cities of the state. A search was made in the offices of the city clerks of Cohoes, Utica and Ogdensburg, and in those of the county clerks of Oswego and Rochester. In none of these cities were any returns of primary elections filed.

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REPUBLICAN VOTE AT GENERAL AND PRIMARY ELECTIONS.[1]

ASSEMBLY DISTRICT.	TOTAL REPUBLICAN VOTES.	PRIMARY VOTES.	
		State Convention.	Nominating Convention.
First	960	481	226
Second	780	91	116
Third	1410	89	69
Fourth	985	152	78
Fifth	1460	84	86
Sixth	1410	160	157
Seventh	3750	74	106
Eighth			
Ninth	3230	121	107
Tenth	2850	326	233
Eleventh	2700	51	58
Twelfth	1775	64	76
Thirteenth	3700	178	640
Fourteenth	1070	183	153
Fifteenth	2185	136	107
Sixteenth	1280	318	336
Seventeenth	3200	342	235
Eighteenth			
Nineteenth	4340	55	63
Twentieth	1965	86	101
Twenty-first	3425	90	112
Twenty-second	3660	194	194
Twenty-third	5700	895	699
Twenty-fourth	2980		
23d ward		143	100
24th ward		30	32
Total	54,815	4343	4074

These figures cannot be passed over without some comment, though they speak with all the force of Nast's caricatures — for

[1] The figures in the first column are based upon the vote cast for state officers at the October election. A much larger vote was cast for other Republican candidates.

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are they not truly caricatures? Less than eight per cent of the Republican voters took part in the primary elections. In only eight of the assembly districts did the percentage of primary voters rise above ten; in some districts the representation was as low as two per cent, and in eleven it was about or below five per cent. It should not be forgotten that whether we look at the vote in the good or in the bad districts, the result is the same: the party voters are not represented. With the statement of the result of the election is filed the printed ballot, prepared of course before the primary meeting — and the reader may venture to guess by whom. This ticket was voted without a scratch in almost every case, and every candidate received almost invariably the same total vote.

Tammany Hall filed returns for the sixteenth assembly district only. In its October primary election, 200 votes were cast; in its December election, 238 votes. The Democratic vote in this district is over 4000.[1]

County Democracy was naïve enough to file some of the returns of its September elections, but it has filed none since. Even these returns are very incomplete.[2] The statement of some of them, presented herewith, will fairly illustrate the voting at the County Democracy primaries.

[1] The proportion of the total Democratic vote cast respectively by Tammany and County Democracy is hard to estimate, because of the frequency of "fusions" and of "deals." Strictly speaking, Tammany's primary vote ought not to be compared with the total Democratic vote, since those only who are "in unison with Tammany Hall" are entitled to vote at its primaries. In the County Democracy primaries, on the other hand, all Democrats are qualified to vote; so that the comparison of its primary vote with the total Democratic vote is technically defensible. The figures given for total Democratic vote, above and in the following table, represent the party vote for state officers at the October election.

[2] It filed no returns for the second, third, fourth, fifth, seventh, ninth, thirteenth, seventeenth, eighteenth, twentieth and twenty-second assembly districts. Of the first assembly district, it filed the returns of the twelfth election district only; of the sixth assembly district, there are missing the returns from the third, twelfth, sixteenth and twentieth election districts; of the returns of the twenty-third assembly district, there is missing that of the sixty-third election district; of the twenty-fourth assembly district, those of the twentieth and the twenty-fourth election districts. That *any* returns were filed was due, as several of the leaders have admitted, to their ignorance of the position of the County Democracy under the law. They did not at once see that the act was — as one of them now terms it — "an hallucination of reformers."

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SIXTH ASSEMBLY DISTRICT. TOTAL DEMOCRATIC VOTE AND COUNTY DEMOCRACY PRIMARY VOTE.

ELECTION DISTRICT.	DEMOCRATIC VOTES.	PRIMARY VOTES.	DELEGATES.
First	140	10	2
Second	205	11	2
Third			
Fourth	250	13	3
Fifth	165	14	2
Sixth	175	6	2
Seventh	205	15	3
Eighth	190	10	2
Ninth	200	11	2
Tenth	85	23	2
Eleventh	175	11	2
Twelfth			
Thirteenth	115	11	2
Fourteenth	185	10	2
Fifteenth	185	13	2
Sixteenth			
Seventeenth	190	7	2
Eighteenth	160	13	2
Nineteenth	120	12	2
Twentieth			
Twenty-first	140	7	2
Twenty-second	155	8	3
Twenty-third	150	16	2
Twenty-fourth	210	16	2
Twenty-fifth	85	12	2
Twenty-sixth	185	6	2
Twenty-seventh	150	17	2
Twenty-eighth	165	16	2
Total	3985	288	51

In this assembly district, less than seven per cent of the Democratic voters participated in the primary election; of these, *sixty-nine* voters, or nearly one-fourth, were officers of election, and there were not six times as many votes cast as there were delegates chosen.

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It will not be necessary to present in the same way the votes at all the County Democracy primaries. It will be sufficient to summarize the votes of certain districts. There were 288 voters in the sixth, 322 in the eighth, 646 in the fifteenth, and 363 in the twenty-first assembly districts. The Democratic voting strength in these districts is fairly represented by the following figures: 4900 in the sixth; 3300 in the eighth; 4800 in the fifteenth; and 3600 in the twenty-first. This shows that less than ten per cent of the Democratic voters attended the County Democracy primaries in these assembly districts.

This array of numbers is sufficient to demonstrate how remote is the relation between a nomination conferred at a party primary and a real expression of the party will. But an investigation of the names which make up the numbers carries the demonstration into the realm of the ridiculous. There are remarkable coincidences between the names on the voting roll and those of the delegates. The most striking examples occur in the returns filed by the County Democracy. Take the sixth assembly district: in the sixth election district, six votes were cast for two delegates, Josiah Rolfes and Henry Goldfogle, and these two delegates each cast a vote, that is, they cast one-third of the total vote; in the twenty-sixth election district a delegate by the name of Samuel Aufner was elected by six votes, two of which were cast by Benjamin and Moses Aufner. In the eighth assembly district we find some equally peculiar combinations. In the sixth election district, eleven votes were cast for Henry Lax; one of the tellers was by name August Blind, and among the voters were William Blind Sr., William Blind Jr., August Blind and Otto Blind. In the tenth election district, two votes were cast and two delegates were elected; the two voters were brothers. In the eleventh election district, eight votes were cast for two delegates, Geo. S. Cornell and Benjamin Benjamin; and on the roll of voters are to be found the names of Joseph Cornell, George S. Cornell, and Benjamin P. Benjamin. In the twenty-third election district, seven votes were cast for David Hirshfield; and Henry Hirshfield and David Hirshfield, reinforced by three brothers Edward, George V.

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and Thomas Welsh, carried the election. In the twenty-ninth election district, the Laber family were the standard bearers. For convenience of reference, these elections might be called, respectively, the Aufner, the Blind, the Hirshfield and the Laber family primaries.

To enable the writer to present the result of the December primary elections of the County Democracy and Tammany Hall, the returns of which it was known would not be filed, persons were detailed to attend the meetings. It may not be amiss to quote some of the reports. The published notice of Tammany ordered that the election should be held between 7.30 and 9 P.M., and that "inspectors must fully comply with the primary election laws of the state of New York *so far as the same are applicable.*" The extent to which Tammany regards the election laws as applicable is amusing. In the second assembly district, there were about thirty people in the meeting rooms; the reporter remained from 7.30 to 8.15 P.M. and saw no meeting whatsoever; before leaving the room he asked one of the persons in attendance whether there would be a meeting, and he was told "most probably not, because there is no opposition." In the fourth assembly district, the reporter attended from 7 to 9 P.M.; he saw people sitting about the room playing poker and other games of cards; the meeting was not called to order until 8.40 P.M. because the man with the ballots did not arrive. It was then moved that the secretary be authorized to cast one vote for the society; which being done, the meeting was adjourned. At the place advertised for the holding of the election in the sixth assembly district, the reporter attended from 7.15 to 9 P.M. but he saw no voting. In the eighth assembly district the voters were assembled in a card room and no concealment was made of the chips and crib-boards; the meeting was called to order at 8 P.M. and was adjourned in fifteen minutes, and during these fifteen minutes card games were being played; the voting was by acclamation. The meeting of the tenth assembly district was called to order at 7.45 P.M.; some one asked the chairman: "Who are the delegates that were selected for election?" The chairman thereupon instructed the

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secretary to read the printed ballot; it was read and accepted; the meeting was adjourned at 8.10. The other reports were of very much the same character. Nowhere were there ballot-boxes or tally-lists; in some of the districts there were no meetings, and in many of them the meetings were not held at the time appointed by the committee on organization. Evidently Tammany does not regard the election laws as "applicable" very far, for it holds its elections at such time and in such manner as it pleases. The elaborate formality of these meetings, and the spirited assertion in them of the American citizen's birthright, resulted in the choice at each of them of not less than fifty persons as delegates. In the sixth assembly district one hundred and fifty persons were chosen as delegates — at a meeting, it should be remembered, which did not take place and by a vote which was not given.

The County Democracy meetings were not very different from what the filed returns of the September elections would lead us to expect. At more than half of the polling places there was no election. In fact, many of the meetings were not held, being, in the words of a Tammany leader, "myths." In one of the election districts of the sixth assembly district, where one delegate was chosen, only one vote was cast; after a little while the candidate for delegate dropped twenty-two ballots in the box and wrote on the tally-sheet twenty-two names. The ballot-box was opened and the result declared, that the candidate was elected delegate by twenty-three votes. This delegate-elect foretold with great accuracy the number of votes cast and the successful candidates in other election districts.

These are the results of an impartial investigation of primary elections in New York city. They prove clearly that the party elections are all non-representative, and conducted with an equal disregard of law and of honesty. The candidates chosen through them reflect in very many cases these conditions; they do not always, merely because in some of the assembly districts of this city the rule of the ignorant and the vicious would not be tolerated, and candidates representing their ideas and purposes would not command the suffrages of the party voters.

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These facts restrain and control the bad influences of corrupt primaries, but they do not remove them. Neither does an independent press nor a conscientious discharge of the duties of citizenship on election day; they mitigate but do not root out the evils.

Already it is evident either that the present legislative control of the primary elections and conventions of political parties is insufficient and inadequate, or that the existing, and in fact any legislative control is unnecessary and undesirable. If the latter be true, the act of 1887 should be promptly repealed; if the former, the evils of corruption at primaries and of their resulting non-representative nominations to public office are of sufficient importance to warrant a further and a more complete state supervision. There is a marked tendency to-day towards a governmental control over many subjects to which it was foreign some decades ago. Though at times it is the part of wise statesmanship to hesitate in a further extension of governmental powers, yet it should be remembered that this tendency is the result of changed conditions which must be recognized in order better to guarantee the personal liberty and the personal security of the citizens. The printing and distribution of ballots by the state, a subject now favorably discussed at public meetings and by the press, is a departure towards a larger governmental activity which would have startled our ancestors; but it is not the less needful and important. On the purity of primary elections depend good nominations and, quite as truly, efficient public officials; for the party label in almost every case commends the candidate to the electors; his trade mark is voted for, and not his character. Many states, accordingly, have found legislation in the direction of primary control wise and important. California, Colorado, Connecticut, Illinois, Ohio, and Pennsylvania, among others, have laws of greater or less stringency concerning the primary elections; and these are already productive of good results.[1] The New York law of

[1] A correspondent from Lancaster, Pennsylvania, writes Jan. 21, 1888, as follows: "I have just closed a protracted trial of an election fraud case under our primary laws with a conviction of the entire board of election officers. I think that is an answer to the question as to whether the bosses run the primaries to their satisfaction."

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1887, though quite comprehensive, should not have been restricted to the organizations that might be pleased to observe it. And it is inadequate in its failure to provide for an enrollment or registration of party electors as a condition precedent to voting at the primaries. Enrollment of the qualified voters is as necessary to party elections as is registration at public elections. While the voters are vaguely defined as being "in unison" or "in sympathy," as in the by-laws of Tammany Hall and of the County Democracy; or so long as the voting privilege is dependent on admission to a club, which is given or denied capriciously, as in the Republican party,[1]—so long will party elections be non-representative. The conduct of these elections and the count of the votes should be assumed by the state. The guaranty of a fair vote, which such state control alone can give, will make the primary elections as popular as public elections.

There is an intimate connection between the corrupt party primaries and the rule of the criminal classes in politics. This point was well put in the editorial columns of *The* (New York) *Evening Post*, in an article entitled, *The Rule of the Criminal Classes*. This article had particular reference to some frauds at the Baltimore primaries, but it is not restricted in its conclusions to that city.[2] The reality of the connection cannot

[1] A very worthy leader in the Republican organization stated that the qualifications of membership prescribed in the by-laws become in practice simply acceptability to the party boss. Furthermore, that the leader of the assembly district can and does control the membership roll. During the past summer in one of the assembly districts in New York city a contest was expected; the leader proposed for membership—and too late for his opponent to counteract this increase, because the by-laws require a certain interval of time—a sufficient number of names to continue his control. This is the testimony of a prominent Republican. It was given to show how unsatisfactory are the present rules of the organization.

[2] "Mr. Cowen seeks to establish three propositions; *viz.*, that in the primary elections of the city of Baltimore the candidates for state and municipal offices are selected by men of criminal character by criminal means; that in such elections the majority does not govern, but that men of criminal record falsify the count and by different methods, distinctly criminal, reverse the will of the people; that the city officials who get office by these means recognize in their appointments their dependence on the criminal class, and act in accordance with its demands." *The* (New York) *Evening Post*, Feb. 18, 1887.

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be better illustrated than in the rule of the Tweed Ring. Describing this "episode" in our municipal history, Mr. Wingate writes:

> It is now only proposed to briefly recapitulate certain of the more immediate and superficial aspects of that social condition, which rendered possible the supremacy of the Ring. First and foremost among these was the foreign element in the caucus and at the polls. The majority of the better class of people were so absorbed in their private matters that they could hardly be induced even to vote, leaving the few honest men who had sufficient public spirit to attend primaries and supervise nominations to be driven to despair by the strength of the corruption they in vain struggled to resist and the blind apathy of those whose interests they defended. Slowly but surely the direction of municipal affairs fell into the hands of practical politicians, who depended upon office-holding for a livelihood, and who ultimately became so numerous that they could control the party machinery and a portion of the spoils of the office.

And again:

> The embryotic conspirators were already here and there through the city government, and it only remained for them to unite their forces. To do this effectually they required the absolute control of some of those great party organizations for which New York has always been peculiar.[1]

This control of the primaries was truly, as Mr. Wingate stated, first and foremost among the political conditions which rendered possible the supremacy of the Ring.

The influence of the politicians to-day is no whit less than it was then. Indeed there is a close analogy between many of the conditions of those days and of to-day. Mozart Hall, the opposing Democratic organization, had just been appeased by Tammany and had discontinued its fight. The County Democracy has now apparently abandoned its fight against Tammany and stands united with it. Oakey Hall went over to Tammany from the Republican party in those days, and, in the words of Horace Greeley, "at a time when there was no new phase of political affairs and absolutely nothing in either national or state politics to call for or to explain it." The same drift among local politicians is noticeable to-day. The Democratic papers were jubi-

[1] Wingate, An Episode in Municipal Government, *North American Review*, 1874.

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lant over the election of many former Republicans at the recent Tammany primaries, and the Tammany politicians are proud of it. There was an apparent calm in city politics until a very few days before that day in July of 1871 when the famous Tweed figures were published in the columns of *The New-York Times*. Only a few weeks before that day Tweed loudly asserted: "We propose to recognize the right of the governed to choose who shall be their governors." There is a calm now; is it the calm which precedes a storm?

This article may raise a question in the minds of some of the readers whether Tammany and the County Democracy and the Republican organization of New York city stand for the principles embodied in their platforms. The answer, which is sufficiently obvious, suggests a second question: What do these organizations represent if they are not true to those principles? Here again the answer is not doubtful. The platform of all these organizations is: The professional politician and public office for him. The politician of to-day does not enter public life inspired by a patriot's devotion to his country; he finds in it an opportunity of earning a livelihood with little effort. He often respects the commandments, and loves his family; but politics is to him a business.

Perhaps this article has afforded additional proof that the party organizations do not represent the party majority nor even its worthy leaders; that its decisions are the automatic registration of the decrees of the party boss; that the party name is but the trade-mark which the politicians have found it profitable to assume; and that the exclusive control which the professional politicians, as leaders of the party organizations, now enjoy in the selection of candidates to public office, and the unquestioning submission which the party voters give to their nominations, are eminently dangerous to Republican institutions.

A. C. BERNHEIM.

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LABAND'S PUBLIC LAW OF THE GERMAN EMPIRE.[1]

THIS is a great book. It is a thoroughly thought-out book. It contains an answer to every practical question concerning the constitutional law of the German empire. It should be read and re-read by every student of political science and comparative constitutional law. The author entitles his work *The Public Law of the German Empire*, and is careful to distinguish its character, scope and purpose from political history and political science. So careful is he to do this that an air of juristic anxiety seems to pervade his entire treatment. If the work is at all subject to criticism, it seems to me that it must be from this standpoint, since the present constitutional law of the German empire had its foundation in revolution and a purely legal treatment of it must ignore or, at least, depreciate the influence of elements not working under the forms of independent legal organization. It is possible that this is only an American view of the subject; but since it is largely for American readers that I undertake this review, I feel it incumbent upon me to justify the criticism by a more minute examination of the author's fundamental propositions. It may, moreover, prove not unbeneficial to our foreign friends to take with us the distant, though perhaps indistinct and distorted, view of their own institutions.

Dr. Laband begins with the declaration that no legal continuity exists between the old German confederation and the North German confederation or its expansion, the present German empire. He declines, therefore, to go farther back in his examination of the subject than to the events just preceding,

[1] Das Staatsrecht des deutschen Reiches. Von Dr. Paul Laband, Professor des deutschen Rechts an der Universität Strassburg. Zweite umgearbeitete Auflage, Band I. Freiburg i. B., Akademische Verlagsbuchhandlung von J. C. B. Mohr, 1888. — Large 8vo, 800 pp.

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and immediately leading to, the catastrophe of 1866. (Page 9.) This proposition is an unqualified recognition of the fact that the old German confederation was destroyed, and the ground cleared for the new, by revolution. It is a proposition which cannot be successfully disputed. We have then the advantage of starting together and with the same foot forward. After the first step, however, I am not sure that our paths do not begin to diverge. The next consideration must be in regard to the revolutionary powers, which first made wreck of the old system and then created the new. There can be no question that chief among these was the Prussian government. The declaration of its representative in the Federal Diet at Frankfort, on the 14th of June, 1866: "Prussia looks upon the previous treaty of federation as broken and therefore no longer binding, and will regard and treat it as extinguished,"[1] was the death-knell of the old system; and in all the movements down to the close of the year 1870 it took the initiative in the creation of the new. But there were other elements of power which must be taken into the calculation. What now were these? If I understand Dr. Laband's position correctly, he holds that they were the separate states. (Page 31 ff.) By states he means what we in America understand by the phrase state governments. He indicates no other organization or existence of the states save in their respective governments. He therefore completely ignores the German nation or the German people as one of the revolutionary powers of 1866; and hence, in his construction of the constitutions of 1867 and 1871, he does not admit their participation in the exercise of the sovereign power, and assigns to their representatives in the legislature only an assenting, not a law-making power. (Pages 219 ff. and 542.) It is not easy to reconcile this view with the language used by the Prussian administration itself in preparing the way

[1] "Im Namen und auf allerh. Befehl Sr. Maj. des Königs, . . . erklärt der Gesandte daher hiermit, dass Preussen den bisherigen Bundesvertrag für gebrochen und desshalb nicht mehr verbindlich ansieht, denselben vielmehr als erloschen behandeln und betrachten wird." Schulthess, Europäischer Geschichtskalender, 1886, S. 90; Ghillany, Diplomatisches Handbuch, Bd. III, S. 208.

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for the revolution. As far back as the 15th of September, 1863, it began acting upon the policy of recognizing the claim of the German people to a participation in political and governmental power. Dr. Laband himself cites the memorial of the Prussian ministry of that date, which declared that the most important and essential reform required by existing conditions was the introduction of national, popular representation into the German government. (Page 10.) From that moment forward, the Prussian administration lost no opportunity of representing itself as the leader of the German nation and the German people in the movement to attain a national and, at least, more popular political system. In the proposal for reform which the Prussian representative in behalf of his government laid before the diet at Frankfort, April 9, 1866, the main proposition was the calling of a national convention, whose members should be chosen by universal suffrage and direct election, and before which the plan of a reform of the existing constitution agreed upon by the different state governments should be laid for consideration and ratification. While the commission of the diet was deliberating upon this motion, the Prussian representative sketched the outline of the Prussian plan, and first and foremost stood the demand for "national popular representation" in the new system. When the Prussian representative pronounced in the diet on the 14th of June, 1866, those words which sealed the fate of the old system, he spoke of the unity of the German nation as the chief fundamental power which remained for the construction of the new system.[1] On the 15th of June, Prussia addressed identical ultimata to the governments of Saxony, Hanover and electoral Hesse, demanding demobilization and their assent to the summoning of "the German Parliament."[2] On the 16th, the Prussian government issued a manifesto to Germany and ordered the Prussian troops to distribute it among

[1] "Indess will Se. Maj. der König mit dem Erlöschen des bisherigen Bundes nicht zugleich die nationalen Grundlagen, auf denen der Bund aufer baut gewesen, als zerstört betrachten. Preussen hält vielmehr an diesen Grundlagen und an der über die vorübergehenden Formen erhabenen Einheit der deutschen Nation fest. . . ." Schulthess, Geschichtskalender, 1886, S. 90; Ghillany, Bd. III, S. 208.

[2] Schulthess, Geschichtskalender, 1866, S. 94.

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the people in the states which they might invade. The manifesto contains this significant clause: "Only the basis of the confederation, the living unity of the German nation, is left; and it is the duty of the governments *and the people* to find for this unity a new and vigorous expression."[1] Finally the most significant part of the agreement of the 18th of August, 1866, between the state executives, was that which pledged them to order elections of representatives of the people to a convention-parliament, which body should consider a constitution to be laid before it by the body of representatives of the state governments and arrive at an agreement in regard to the same. (Page 17.) Dr. Laband touches upon all of these points, but he does not appear to give them any weight whatsoever in his account of the origin of the constitution or his construction of its character. His position seems to be, that after the dissolution of the old confederation nothing remained but the governments of the separate states. The princely heads of these governments formed the agreement of August 18, and appointed their respective representatives to the body which was to draft the constitution. The legislative branch of these governments enacted the law of suffrage and elections for the choice of the popular representatives from each state to the convention-parliament. These elections were held under the governmental organization of each state. Finally, the constitution agreed upon by the princely representatives and the convention-parliament was ratified by the legislative power of each state. Therefore the state governments, in union, formed the new constitution. They are, therefore, the sovereign power upon which it rests, and through their organ in the constitution, the Federal Council (*Bundesrath*), they continue to exercise the sovereign power.

This is certainly a juristic view of the subject. It seems to me excessively juristic. It seems to me to ignore too far the revolutionary origin of the constitution, and to attach itself too minutely to existing legal forms and organizations. We did the

[1] "Nur die Grundlage des Bundes, die lebendige Einheit der deutschen Nation, ist geblieben, und es ist die Pflicht der Regierungen *und des Volks*, für diese Einheit einen neuen lebenskräftigen Ausdruck zu finden." Ghillany, Bd. III, S. 210.

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same thing for three-quarters of a century in the construction of our public law, and for doing this we paid a bitter penalty. I do not know how much aid or countenance the Prussian government secured from the German people in the war of 1866 through its promises of reform, its proclamations and manifestoes. It is possible that they regarded these as mere phrases and did nothing or omitted nothing upon their part, which could be regarded as establishing an obligation. Nevertheless we cannot exactly comprehend why, of the three organizations which conspired to form the constitution of 1867, the parliament, which represented the German people as a whole, is assigned to the position of a merely assenting body, while the state executives and legislatures are declared to be the real constitution-making powers. The actual procedure was as follows. Count Bismarck laid the draft of a constitution before the body of princely representatives. After they reached an agreement in regard to it, it was sent to the parliament of popular representatives, which changed the instrument in some forty points and adopted it in the resulting form. It was then returned to the body of princely representatives, who accepted the changes. It was then sent to the state legislatures, all of which adopted it without change. It is difficult for an American to see, in this procedure, the reason for denying to the parliament any real constituent power, while such power is accorded both to the body of princely representatives and to the state legislatures; and when, finally, the state legislatures are assigned, in the state systems, to the position of mere assenting bodies (page 87), *i.e.* councils *in pleno*, on the ground that the systems are monarchic, and consequently the real constitution-making body is ultimately found to be the assembly of princely representatives, the American student of this subject becomes hopelessly puzzled. He may not be able to detect and point out a fallacy, but his political conscience feels that there is sophistry somewhere. My feeling is, that the error lies in construing a public law originating in revolution upon a too exclusively juristic interpretation of its principles. Political history, political science, public policy and even political ethics demand

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consideration in the construction of such a constitution; and if they are not considered, if an exclusively juristic method of reasoning is followed, the construction will run into lines which contradict natural and existent conditions, both in fact and in their relations.

One of the points at which this result becomes most dangerous in a federal system, such as the German empire or the United States, is the question of the relation of the union to the separate states. Dr. Laband has worked himself free from the old notion, represented most prominently in the German literature of political science by Waitz, that there is a division of the sovereignty in such a system between the union and the states, and comes out clear upon the impregnable ground that the sovereignty is indivisible and unlimited in the union. (Page 54.) The only standpoint from which this view can be attained is that of the publicist, and I was encouraged to expect that the whole subject of the relation between the states and the union would be treated mainly from that standpoint. I must, however, confess to some disappointment in regard to this. The learned author betrays much anxiety to preserve to the separate states the character of real states, while he denies to them the possession of any sovereign power. The jurist comes again to the front, and rescues the state from the category of organizations having only derived powers by the proposition that the distinguishing characteristic of the state in general is not sovereignty, but only the power to command and compel obedience to its commands from the free subjects of the state. (Page 64 ff.) It seems to me that this distinction will not hold. If this power to command and to compel obedience be underived and independent, then it is sovereignty pure and simple. If on the other hand it be in any sense derivative, then the criterion of distinction which Dr. Laband sets up between the relation of the states to the union and that of the municipal divisions of the state to the state largely breaks down, since these municipal divisions have also the power to command and compel obedience to their commands from the free subjects of the state, and in their case this is clearly a vested power. If sover-

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eignty in the federal system be exclusively in the union, then it seems to me that this makes the union the only real state, and that the only distinction which remains between the separate states and the municipalities lies in the fact that while the municipalities derive their authority from the states in a positive and definite manner, the states derive their power from the union in a permissive and general manner. To be completely scientific, then, in our nomenclature and emancipate ourselves completely from the power of customary phrases, we should gave the name *state* only to the union and find some other term to designate its members. In America we have already the suitable title — *commonwealth.*

The most important point in any constitution, after the question of its original establishment, is the provision for amendment or revision; since it is in this provision that the sovereignty gives itself a permanent form of organization. The German constitution presents great difficulties to the general student upon this point, and it was with much interest that I approached Dr. Laband's explanation of the provision. I regret to say that I did not receive all the help which I had anticipated. The difficulty lies in the fact that the same organs which make statute law, as we say, make also constitutional amendments. The process in the two cases is also the same. The only distinction is in the difference of majority required. Article 78 of the constitution reads as follows:

> Veränderungen der Verfassung erfolgen im Wege der Gesetzgebung. Sie gelten als abgelehnt, wenn sie im Bundesrathe 14 Stimmen gegen sich haben.
>
> Diejenigen Vorschriften der Reichsverfassung, durch welche bestimmte Rechte einzelner Bundesstaaten in deren Verhältniss zur Gesammtheit fest gestellt sind, können nur mit Zustimmung des berechtigten Bundesstaates abgeändert werden.

That is to say, the legislature of the empire may change the constitution generally, unless 14 of the 58 voices in the Federal Council (or state chamber) object; but in certain cases, *viz.*, when the change is in regard to the rights of a state, guaranteed in the constitution, the voice of that state must not be

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found in the negative. In other words, in such case the single voice of the state so affected may successfully veto the project.

The great question of hermeneutics in regard to this subject is: How shall a project of simple legislation be distinguished from a proposition to amend the constitution, and how shall a proposition to amend generally be distinguished from one to amend those specific clauses guaranteeing certain rights and powers to a particular state of the empire? The naïve reply would be: By the content of the project or proposition. But suppose it should not be clear from the content to which class the particular proposition belongs; or suppose a conflict of opinion, springing either from such unclearness or from mere party prejudice, should arise in the legislature: how shall a decision upon this point be reached?

A complete system must furnish an organ for the determination of this question. There is no express provision of the German constitution which does so. It becomes, therefore, a matter of implication. Dr. Laband appears to me to give two answers to this question and the one seems to contradict the other. On page 260, in treating of procedure in the Federal Council, he affirms:

> Veränderungen der Verfassung sind abgelehnt, wenn sie 14 Stimmen gegen sich haben. (Art. 78, Abs. 1.) Die Vorfrage, ob der Gesetzesvorschlag eine Veränderung der Verfassung enthält oder nicht, wird durch diese Vorschrift nicht berührt; denn diese Vorfrage betrifft nicht eine Abänderung, sondern eine Auslegung der Verfassung. Sie wird daher durch einfache Mehrheit entschieden.

If I correctly comprehend this statement, the principle here advanced by Dr. Laband is that the question whether a given proposition is a project of law simply or of constitutional amendment, is to be decided by a simple majority of the votes in the Federal Council. This preliminary question, he says, is not a question of constitutional amendment, but of constitutional interpretation. It seems to me that this is a decidedly radical view. It enables a bare majority in the Federal Council and Imperial Diet, by declaring the project of constitutional change

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to be one of ordinary law, to defeat the veto power which Prussia, through her 17 voices in the Federal Council, may exercise against changes in the constitution. A change in the constitution may of course be effected without changing the wording of the instrument. Dr. Laband not only admits this possibility, but cites examples in the legislation of the empire where this has actually been done. (Page 347 ff.) It is not at all unthinkable that in a moment of strong Guelphish opposition to Prussia, a majority in the legislature might become so blinded by prejudice as really to consider a proposition weakening the constitution of the empire, but not changing the text, to be simply a project of law. It seems to me that, in view of the part taken by Prussia in the creation of the empire, and of the fact that she makes out about two-thirds of the empire both in territory and in population, there should be no legal means invented whereby, through the process of questionable interpretation, changes in the constitution could be effected without her consent.

On the other hand, the principle that the hermeneutical question shall be determined by a mere majority vote in the Federal Council and Imperial Diet makes the guaranty of the constitution, that the specially recognized rights of certain states shall not be changed without their own consent, insecure. It is very desirable that the exceptional rights of the South German states should be abolished; and it is not at all improbable that a long continued and decidedly unreasonable resistance to such change in the manner prescribed in the constitution, might influence the minds of a majority of the members of the legislature to turn the flank of the opposition by so deciding the preliminary question of interpretation as to accomplish this result. I cannot help feeling that such a procedure would violate the constitution and would engender a bitterness of feeling as hostile to the further development of the empire as is the present status. It would furnish a temptation which ought not to exist.

But the passage above quoted does not contain all that the author has to say on this question. Discussing *Die Ausferti-*

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gung der Reichsgesetze by the Emperor — *i.e.* the act of furnishing the bills passed by the Federal Council and Imperial Diet with the formula of command — Dr. Laband writes:

Die Eingangsworte der Gesetzesurkunde lauten: "Wir . . . verordnen im Namen des deutschen Reiches, *nach erfolgter Zustimmung des Bundesrathes und des Reichtages*, was folgt." Die Ausfertigung des Gesetzes enthält also die kaiserliche Versicherung, dass das Gesetz die Zustimmung des Reichstages und Bundesrathes erhalten hat, d. h. den Anforderungen der Reichsverfassung gemäss zu Stande gekommen ist. Sie setzt demnach eine Prüfung des Weges, den das Gesetzgebungswerk zurückgelegt hat, voraus. Dem Kaiser als solchem steht zwar ein Veto gegen das Reichsgesetz nicht zu; aber der Kaiser hat das Recht und die Pflicht, zu untersuchen, ob das Gesetz in verfassungsmässiger Weise die Zustimmung des Reichstages und Bundesrathes und die Sanction des durch den Bundesrath vertretenen Reichssouveräns erhalten hat. Er hat daher insbesondere zu prüfen, ob im Bundesrathe die Abstimmung nach den im Art. 7 der Reichverfassung aufgestellten Regeln und ob die Beschlussfassung den Bestimmungen der Art. 5, 37 oder 78 der Reichsverfassung gemäss erfolgt ist; ob dem Gesetz, falls es *jura singulorum* berührt, der davon betroffene Bundesstaat zugestimmt hat; ob der Reichstag und Bundesrath die Gesetzesvorlage den bestehenden Vorschriften gemäss behandelt haben; ob zwischen den Beschlüssen beider Körperschaften völlige Uebereinstimmung besteht u. s. w. Wenn diese Prüfung zu einem negativen Ergebniss führt, so hat der Kaiser nicht bloss das Recht, sondern die Pflicht, die Ausfertigung zu versagen, bis der Mangel gehoben ist. Auch wenn der Kaiser irrthümlich zu dieser Ansicht gelangen sollte, so gilt seine Entscheidung, denn es gibt keine höhere Instanz, welche ihn zur Ausfertigung des Gesetzes anhalten könnte. Es ist daher *thatsächlich* die Möglichkeit gegeben, dass der Kaiser, indem er die Ausfertigung des Gesetzes aus einem formellen Grunde versagt, ein Veto ausübt. Eine politische Gefahr ist in diesem Satz nicht zu finden; man würde völlig seine thatsächliche Bedeutung verkennen, wenn man daraus den Schluss ziehen wollte, dass es in die Willkühr des Kaisers gestellt sei, ob er ein Gesetz ausfertigen wolle oder nicht. Die Rücksicht auf den Bundesrath und auf den Reichstag, auf die öffentliche Meinung und auf das eigene Ansehen machen es ganz unmöglich, dass der Kaiser die ihm übertragene Befugniss widerrechtlich missbrauche.

Erkennt der Kaiser an, dass das Gesetz in tadelloser Weise den Vorschriften der Reichsverfassung gemäss zu Stande gekommen ist, so ist die Ausfertigung desselben seine verfassungsmässige Pflicht.

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Wenn der Kaiser die Ausfertigung ertheilt, so wird damit in formell unanfechtbarer und rechtswirksamer Weise constatirt, dass das Gesetz verfassungsmässig zu Stande gekommen ist. [Page 549 ff.]

I have cited this passage in full because it seems to me to contain the most important proposition of the entire work. If I comprehend it correctly, the principle here enunciated by Dr. Laband is that the Emperor, under the prerogative conferred upon him in article 17 of the constitution [1] — that of putting the bills passed by the Federal Council and Imperial Diet into the form of commands, — has the power to examine the contents of the bill and to determine therefrom whether it is a simple project of law or an amendment of the constitution, and to refuse to confer the force of law upon any bill which shall not have been passed by the majority prescribed by the constitution in accordance with its character. Dr. Laband says that the Emperor not only has the power to do this, but is constitutionally bound to do it. On the other hand, he is constitutionally bound to give a bill the force of law when he is convinced that it has been passed in the manner prescribed for such bills by the constitution. Finally, it is asserted that the constitutionality of the Emperor's act cannot be called in question by any other power, magistrate or person in state or empire.

I think this is good political science, but questionable jurisprudence. From the standpoint of political science, we should be obliged to pronounce the German constitution faulty and incomplete, if it did not provide some organ for determining whether a proposed bill bore the character of a law simply or that of a constitutional amendment; and I do not see how this great power could be intrusted to safer hands than those of the Emperor. In view of the relation of the Emperor to the German people and nation, to the princes of the several German states and to the state of Prussia, it cannot well be doubted that Dr. Laband's conclusion, that this great responsibility will be better fulfilled by the Emperor than by any other organ of the constitution, is correct. But the derivation of this great power

[1] The portion of art. 17 which confers this power reads: "Dem Kaiser steht die Ausfertigung und Verkündigung der Reichsgesetze . . . zu."

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from the prerogative of furnishing the bills passed by the legislature of the empire with the formula of command, is, to say the least, an extraordinary bit of interpretation. This prerogative is usually regarded as a ministerial power and the exercise of it as a purely formal act. The executive usually goes no farther in his examination of a bill passed by the legislature, preliminary to its proclamation as law, than the attestation of the proper officers of the legislative body to the fact of the passage. It is certainly then a little startling to find the claim advanced that the guardianship of the constitution is contained in this power.

It seems to me that the German constitution really makes no provision to meet this question. The framers of this constitution were men who had had little experience in such work, and they naturally left many important points uncovered. It is the problem and the duty of the interpreter to make as much use of the principle of reasonable implication as possible in the building up of the body of public law upon the basis of the constitution; but when so great a jurist and publicist as Dr. Laband presents two different and apparently contradictory[1] interpretations of the constitution, then surely it is time to acknowledge that the constitution is incomplete upon this point and seek for its amendment. It would be interesting to know if this question has ever come to issue between the Emperor and the legislature, and if the legislature has acquiesced in the view that the Emperor has the power to pass upon the constitutionality of its

[1] I say *apparently* contradictory, because it is conceivable that a simple majority of the Federal Council might decide, in first instance, that a bill involves no change of the constitution, and the Emperor might decide, in second instance, that the bill does involve such change and therefore requires more than a simple majority of voices; and Dr. Laband may mean to construe the constitution in precisely this manner, so that the decision of the Council is of no effect if the Emperor takes an opposite view and refuses to promulgate the new law. But again Dr. Laband may mean that the decision of the Federal Council, if the question is directly brought to vote, prejudices the Emperor's decision, and that the Emperor is to investigate the question only in case the Federal Council has omitted to declare its view. He has certainly failed to make clear the relation existing in his mind between the Council's right to interpret the constitution and the right of the Emperor to do the same thing. On page 260, where this power is attributed to a simple majority of the Federal Council, von Rönne is cited (in a foot-note) as holding the same view. But von Rönne holds that the decision of the Council (and Diet) is *final*.

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acts under his prerogative to clothe them with the formula of command. It would also be most highly interesting to know if the supreme judicial power of the empire has taken any position upon the subject. Dr. Laband does not inform us as to either of these points, and we conclude therefore that the problem has not yet received a practical solution.

The questions of sovereignty and of the relation of the states to the empire once behind him, Dr. Laband has a fairer field for his strict juristic methods. His definitions are admirable. His analyses are careful and exhaustive. His conclusions are satisfactory. He has certainly done a great work in the development of the science of public law in general and of the public law of Germany in particular. His task has been one of great difficulty and of great responsibility — of great difficulty on account of the extreme complexity of the relations in the German system, and of great responsibility because of the authority attributed in the German practice to the scientific commentators upon the constitution and the laws. The publicists and jurists not only of Germany but of the world owe him a great scientific debt, and should give generous expression to their sense of obligation.

JOHN W. BURGESS.

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STATE STATUTE AND COMMON LAW.[1]

IV.

WHEN, in the United States, we distinguish statutory from common law, we habitually think only of the different sources from which two bodies of law proceed. The antithesis, in our minds, is between judge-made law and that enacted by legislatures. But (if we leave the federal statutes out of the question) there is another and very important difference. Our state statutes are local law, while the common law, as its name implies, is a national system. This, the political point of view, has been strangely ignored in all recent discussions concerning the advisability and the effect of state codifications.

That this point of view has been neglected is due to a lack of agreement upon the principal premise. It is not uniformly recognized that our common law is a national system. Even in the Supreme Court of the United States it has been said, *obiter*, that there is no national law except the constitution, the treaties and the laws of the United States.[2] Now it is quite true that there is no other *supreme* national law; no other law, that is, which overrides the statutes of the single states. But the law which regularly prevails in the absence of other law, national or local, may properly be called national law, and it is in this sense only that the term is applied to the common law. It is our *subsidiary* national law.

It has also been said, again in the Supreme Court of the United States, that the common law obtains only so far as it has been "adopted by the several states, each for itself."[3] This is not quite true. Under the constitution and laws of the

[1] A previous paper, discussing the same topics from a different point of view, was published in the POLITICAL SCIENCE QUARTERLY, vol. ii. no. 1, p. 105.

[2] Wheaton *vs.* Peters, 8 Peters 591, 657 ff.

[3] Wheaton *vs.* Peters; Smith *vs.* Alabama, 124 U.S. 465, 478.

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United States lies, as the recognized basis of interpretation, the law which our forefathers brought from England;[1] and in every domain of jurisdiction assigned to the federal judiciary, this law in fact prevails in the absence of opposing statutory law, national or local. In the single states, on the other hand, it is true that the common law obtains only so far as it has been adopted; but the adoption was not dependent upon any legislative act. The English common law lay at the basis of our colonial civilization, and the acts by which the majority of our commonwealths recognized or "adopted" it were simply declaratory. It would no more have ceased to prevail in the absence of such acts than would the English language. Except where its rules are absolutely inapplicable, and except in those parts of the country where it is not a national heritage — where the colonists and all their institutions were French or Spanish, — the English common law, in the absence of opposing statutes, is the law of the land.

The recognition of this fact, that our common law is a national system, is further impeded by the method in which it has been developed since the establishment of our independence, and by the legal theories under which this development has proceeded. Its interpretation — which of course means its development — has been largely entrusted, under our constitutional system, to the state courts; and it has been difficult for the layman, and still more difficult for the lawyer, to conceive that a law interpreted by the judiciaries of nearly forty independent states, could remain for more than a century really national. And even in the federal courts, the natural organs for the development of national law, the fact that the law applied is national has been cloaked from the outset under a contrary theory. Barring the cases where the United States courts apply supreme national law, — that is, the constitution, treaties and laws of the United States, — their jurisdiction rests upon the following provision of the constitution:

> The judicial power shall extend . . . to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and

[1] Smith *vs.* Alabama, *loc. cit.*

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maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states; and between a state, or the citizens thereof, and foreign states, citizens or subjects.[1]

In the exercise of this jurisdiction, the United States courts are controlled by the Judiciary act of 1789, chapter 20, section 34, which provides:

> That the *laws of the several states*, except where the constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States, in cases where they apply.

In all cases, therefore, where the federal courts obtain jurisdiction under the constitution and laws of the United States, and where no provision of the supreme federal law is applicable, they are obliged first to determine in what state the law governing the case is to be sought, and then to find and apply the law of that state.

But how has the Supreme Court of the United States interpreted this command? It has declared, in an unbroken series of decisions, that if the law governing the case is common law, it (the Supreme Court) is not bound by the interpretation placed upon that law by the courts of any state, but will follow its own judgment. In 1838 Justice Story said:

> Questions of a general and commercial nature . . . are not deemed by the courts of the United States to be matters of local law, in which the courts of the United States are positively bound by the decisions of the state courts. They are deemed questions of general commercial jurisprudence, in which every court is at liberty to follow its own opinion.[2]

In 1842 the Supreme Court at Washington declared:

> In all the various cases which have hitherto come before us for decision, this court have uniformly supposed, that the true interpretation

[1] The jurisdiction granted by this clause is limited, of course, as far as suits against states are concerned, by the eleventh amendment.

[2] Robinson *vs.* Commercial Insurance Co., 3 Sumner 220, 225.

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of the thirty-fourth section limited its application to state law strictly local, that is to say, to the positive statutes of the state, and the construction thereof adopted by the local tribunals. . . . It has never been supposed by us, that the section did apply, or was designed to apply, to questions of a more general nature, not at all dependent upon local statutes, . . . as, for example, to the construction of ordinary contracts or other written instruments, and especially to questions of general commercial law.[1]

These decisions have been followed, in uninterrupted line, by others of like import.[2] In the construction of a deed conveying land in the state of Maine, the federal court disregarded the views of the supreme court of that state, asserting its right to interpret "matters and language belonging to the common law" as it saw fit.[3] In the exercise of its equitable jurisdiction,[4] and in its ecclesiastical decisions, it has always maintained equally free hand. In a case of the latter sort, that of Watson *vs.* Jones,[5] the Supreme Court of the United States had occasion to apply the law of Kentucky; and, finding no statute, overturned the decision of the supreme court of that state, and at the same time departed from the English decisions — thus making absolutely new law.

But *what* law is this — this law which the Supreme Court of the United States creates, changes and destroys at its will? Is it state law, or is it national law? In some cases the court seems to avoid the question. In commercial cases it has more than once declared that the commercial law is "international"; but it does not seem in any such case to have sought its precedents outside of the English and American reports. In other cases, it has sometimes declared the question to be one of "gen-

[1] Swift *vs.* Tyson, 16 Peters 1, 19.

[2] Carpenter *vs.* Providence Insurance Co., 16 Peters 495, 511; Foxcroft *vs.* Mallett, 4 Howard 353, 379; Meade *vs.* Beale, Taney 339, 360; Oates *vs.* National Bank, 100 U.S. 239, 246; Railroad Co. *vs.* National Bank, 102 U.S. 14, 29; Williams *vs.* Suffolk Insurance Co., 3 Sumner 270, 276; Austin *vs.* Miller, 5 McLean 153, 157; Gloucester Insurance Co. *vs.* Younger, 2 Curtis 322, 339; The Brig George, Olcott 89, 101.

[3] Foxcroft *vs.* Mallett, 4 Howard 353, 379.

[4] Neves *vs.* Scott, 13 Howard 272, and cases there cited.

[5] 13 Wallace 679. For discussion of this case, see Burgess, Religious Associations, *Andover Review*, July 1887.

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eral jurisprudence"; but where this phrase is used, it is not demonstrable that the principles of general jurisprudence resorted to were other than those of the common law. As a rule, however, the court asserts or implies that, in interpreting and applying the common law, it is actually enforcing "the laws of the several states," as the Judiciary act directs. The latest declaration to this effect occurs in the case of Smith *vs.* Alabama, decided January 30, 1888. Mr. Justice Matthews, who delivered the opinion of the court, said:

> A determination in a given case of what that [the state] law is may be different in a court of the United States from that which prevails in the judicial tribunals of a particular state. This arises from the circumstance that the courts of the United States, in cases within their jurisdiction, where they are called upon to administer the law of the state in which they sit or by which the transaction is governed, exercise an independent though concurrent jurisdiction, and are required to ascertain and declare the law according to their own judgment. This is illustrated by the case of Railroad Co. *vs.* Lockwood, 17 Wallace 357, where the common law prevailing in the state of New York, in reference to the liability of common carriers for negligence, received a different interpretation from that placed upon it by the judicial tribunals of the state; *but the law as applied was none the less the law of that state.*

It seems clear to me, on the contrary, that the law applied in the case of Railroad Co. *vs.* Lockwood was not the law of New York. According to all legal logic, the interpretation placed upon the law of a state by its highest court is the law of that state; and if a court of Kentucky, or a court of the United States, in pretending to apply a rule of New York law, gives it a different interpretation and effect from that which the highest New York court has given, then neither the Kentucky nor the United States court applies the law of New York. This consideration has been conclusive with the Supreme Court of the United States as far as state statutes are concerned. When the state law is statutory, the federal courts recognize the authority of the state interpretation, declaring that a well-settled construction is a local *rule*.[1] But the argument is really

[1] Burgess *vs.* Seligman, 107 U. S. 20, 33, and cases there cited; Flash *vs.* Conn., 109 U. S. 371, 378; Gibson *vs.* Lyon, 115 U. S. 439, 445; Norton *vs.* Shelby County,

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stronger when the rule governing a particular question is of judicial origin. A statute is one thing and its interpretation is another. Different courts may give diverse interpretations, and maintain in each case that they are applying the statute. But a rule of common law exists only in its interpretation; it is nothing but a series of concurrent decisions. Change its interpretation, and you change the thing.

The theory of the Supreme Court, that in putting its own interpretation upon common law it is applying state law, is therefore obviously a legal fiction. But this fiction is a power. It has been said that the English Parliament could not make a man a woman; but it could establish a legal fiction to that effect, and cause a particular man to be subjected to all legal disabilities which attach themselves to womanhood. The federal courts cannot make their interpretation of the common law "law *of* the several states"; the logical impossibility in this case is as complete as the natural in the other; but they can make their interpretation law *in* the several states, as far as their jurisdiction extends, and this they have done.

And the fiction is a necessary one. It was forced upon the federal courts by the language of the Judiciary act, which in fact recognizes no national law except "the constitution, treaties [and] statutes of the United States." Without this fiction the Supreme Court of the United States would be reduced to a subordinate and unworthy position. It would discharge, as against the supreme court of any single commonwealth, the office of a district court, following the decisions of a higher tribunal. It would then be only logical, instead of removing cases from the state to the federal courts on writ of error, to give defeated suitors appeal from the Supreme Court at Washington to the supreme court of the state whose law is recognized as determinant of the issue. Without this fiction, again,

118 U. S. 425, 439; Hanrick *vs.* Patrick, 119 U. S. 156, 170. — Such cases as Ohio Insurance Co. *vs.* Debolt, 16 Howard 416, 432; Watson *vs.* Tarpley, 18 Howard 517, 520; and Pine Grove *vs.* Talcott, 19 Wallace 666, 677, form no exception to the rule. These decisions rest upon the clause in the federal constitution forbidding the states to impair the obligation of contract; a prohibition which, in the view of the Supreme Court, extends to state courts as well as state legislatures.

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our common law could hardly have remained what it is, a substantially uniform system. Every student of state reports knows how great an influence the federal interpretation of the common law has exercised upon our state courts; how often a side current of state decisions has been drawn back into the main stream of judicial interpretation by a decision of the supreme federal tribunal. Unchecked by the great authority of this court, the interpretation of the common law in the different states must have been far less consistent. The law of each state would have diverged from that of the others, until the common law of the nation had become a meaningless phrase.

When it is remembered that the Supreme Court has been able to maintain its uniform interpretation of the law only by steadily affirming that the national law which it applies is state law, the paradox is perfect. The court has kept our common law national by ignoring the existence of a national common law. It is one of the cases, not infrequent in legal history, where a legal fiction keeps law in harmony with political verities.

The position taken by the Supreme Court of the United States has necessarily exercised a great influence upon the state courts. They too, while affirming the common law to be state law, have treated it as a national system;[1] they have always paid great regard, not only to the decisions of the federal courts, but to those rendered in other states; they have always discussed with especial interest those cases where the views held by courts of different commonwealths are found to be in conflict, and they have generally been animated by a

[1] In Faulkner *vs.* Hart, 82 N.Y. 413, the New York Court of Appeals followed the theory of the federal courts. The law governing the case, it was recognized, was the law prevailing in Massachusetts; but in Massachusetts the law concerning the point at issue was common law; and in interpreting the common (commercial) law, the New York court declared itself in no wise bound to follow the decisions of the Massachusetts courts. It accordingly decided the case on its own theory of the common law. This, to my mind, involves a recognition of the national character of the common law. The court disclaimed the intention of applying New York law, and undertook to apply the law prevailing in Massachusetts; but it certainly did not apply Massachusetts law, for the case, it was conceded, would have been decided by the Massachusetts courts in the opposite sense; therefore the common law, in Massachusetts, is not simply Massachusetts law.

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sincere desire to bring out of such discords a more perfect harmony. In a word, they have done their best to keep the common law common. This effort is doubtless due, in part, to considerations of public policy. Our judges are well aware that conflicting decisions cause practical inconvenience, embarrassing business and confusing family relations. But another and more subtle influence has made for unity in the development of our judicial law, — I mean the theory of the common law itself concerning the source of its rules. Theoretically, the special rules of the common law are derived from a pre-existing body of general principles, and when a new question arises the answer is to be found by deducing from some recognized principle the required new rule.[1] This conception has great and beneficent results. Since every case is regarded as a scientific problem, to be solved by logical deduction from established premises, contradictory results awaken a certain impatience. Jurists who differ in their conclusions are eager to detect the

[1] In point of fact, the rules of every legal system are ultimately determined by social needs, and the principles (which are nothing but very general rules) are obtained by induction from the (special) rules. But as the work of induction goes on, and the formulation of principles becomes more perfect, new rules can be and are obtained by deduction from accepted principles. In this sense, the theory of the common law is true. But this does not invalidate my assertion that the rules are ultimately determined by social interests; for if the rule obtained by deduction does not work well (*i.e.*, does not correspond to the social necessities which it is designed to meet), it is discarded, and a "positive" rule, accepted *contra tenorem juris* and *propter utilitatem*, is set in its stead. Then the principle is burdened with an exception, and perhaps with a second and a third; until the development of juristic science shows that the principle was wrongly formulated, and so recasts it that all the exceptions become corollaries. In this sense it is perpetually true that the principles themselves are determined by induction. Just as the rules of judge-made law are "working rules," subject to continual amendment, so the principles are "working hypotheses," subject to continual correction — and therefore capable of continuous development.

But the decision of a concrete case, in a court of law, is always a deductive operation. In the simplest cases, the opinion of the court is reducible to a syllogism, of which the major premise contains the rule of law, the minor premise the facts of the case, and the conclusion the decision. In more complicated cases, the judicial reasoning consists of a series of syllogisms. When a new rule has to be formulated, a syllogism is employed in which the major premise is one of those broad generalizations which we call principles. When I say that these principles are really obtained by induction, I assert what John Stuart Mill, in his famous discussion of the syllogism, claims to be true of major premises generally; see his System of Logic, book ii, ch. iii.

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cause of the difference, the error in their own reasoning or the fallacy in that of their opponents. The comparison of conflicting decisions thus becomes not merely natural but inevitable; and their discussion is less apt to be barren of result than most controversies, because the disputants commonly admit each other's premises. Even under these conditions, argument will not always produce agreement; but agreement is infinitely easier than it would be if the courts approached new questions as legislators do, and endeavored to solve every problem by a direct appeal to "public policy." Agreement, in fact, has so generally been attained, that, in spite of the limitless possibility of divergence afforded by the number of our states and the independence of their courts, the interpretation of the common law remains fairly uniform throughout the Union.

From the point of view here taken, we have in the United States four great bodies of law:

(1) The constitution, treaties and statutes of the United States;

(2) The constitutions and statutes of the several states;

(3) The common law as interpreted by the federal courts; and

(4) The common law as interpreted by the state courts.

Of these, the first represents strictly national law; and the third and fourth, although in theory local, are really national also. The second, on the other hand, in theory and in fact alike, is simply and strictly local. The order of validity is that in which I have placed them. Each of these bodies of law overrides those which follow, and each is overridden by those which precede. The entire common law is thus at the mercy of our state legislatures. As soon as a state statute seizes the ground previously occupied by a rule of common law, not only are the state courts bound to give it effect, but the federal courts, in applying the law of that state, are bound not merely by the words of the statute but also (as the Supreme Court has regularly declared) by the interpretation placed upon that statute by the highest court of the state. Every state statute which invades the domain of the common law therefore invades and *pro tanto* destroys the subsidiary national law of the land.

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Now a code, as the phrase is commonly understood, is intended to supersede the entire common law of the state in which it is enacted. It is intended to make the law of that state wholly statutory. Accordingly, the adoption of such codes in all our states would entirely destroy our subsidiary national law. It may be objected that the intent of the codifier is usually not to change, but to declare, the common law. To this the obvious and immediate answer is, that all the codes that have been adopted, and all that are proposed, do in fact involve changes. But even if this were not the case, and even if we assume, for the sake of argument, the establishment in each of the several states of codes simply declaratory of pre-existing common law, the point of greatest consequence is not touched. The chief question is: What will be the effect of the general adoption of state codes upon the general *development* of our law? For law, it must always be remembered, cannot remain stationary. It must change with the changing form and needs of the society which it rules.

What, in the first place, will be the effect as regards the development of our law by interpretation? As far as the single states are concerned, the inevitable results have been sketched in my previous paper. The effect upon the nation at large, upon the unity of our law, remains to be noticed. Unless the Supreme Court of the United States changes its practice, the construction of all these codes will lie wholly with our state judiciaries.[1] If the Supreme Court adheres to the rule it has heretofore recognized, and follows the construction placed upon each state statute by the highest state court, the controlling influence which the federal judiciary now exercises upon the interpretation of our common law will disappear. And not only will this regulative influence vanish, but another force that has worked for harmony in our state decisions will cease to be felt. From the standpoint

[1] It is noticeable that in its more recent decisions the Supreme Court does not say that it is bound to follow the state courts in their construction of state statutes, but that it does this "for the sake of harmony and to avoid confusion." If, therefore, greater confusion would be caused by following conflicting constructions of similar statutes in different states, it seems probable that the court would change its practice.

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of legal science, the interpretation of words is a much lower and less interesting problem than the deduction of rules from principles; and since the construction of our code law in the different states will turn largely upon the exact meaning of words, the state courts will take much less interest in, and pay far less heed to, each others' decisions than is now their custom.

Judicial interpretation, however, will play but an insignificant part in the development of code law. Codification means the substantial transfer of the law-making function, within the domain now occupied by common law, from the federal and state judiciaries to the state legislatures. The question of the development of our law, regarded from the national standpoint, accordingly shapes itself as follows: — How will our state legislatures acquit themselves of this task? Will they show the same comprehension of the needs of the nation, the same disposition to keep its law uniform, which the state judiciaries have manifested? I fear these questions can hardly be answered in the affirmative. Forty-six state and territorial legislatures cannot be expected to work with harmony of purpose and unity of result. There is for them no such regulative central influence as is exercised over our state judiciaries by the Supreme Court of the United States; there is for them no such agreement upon the premises and methods of their action as exists for our state courts in the theory of the common law. The prime aim of the state legislator, be he ever so honest and ever so able, is to serve the people of his section, to defend their peculiar interests and to realize their peculiar wants. If by chance he rises above the needs of his section, he is limited by his office to the consideration of the interests of his state. It is not his duty to take thought for the American people. These *a priori* conclusions are confirmed by facts. In those portions of the law of which our state legislatures have assumed control, there is a lamentable and increasing divergence. I have shown in my previous paper that, in our codeless states, a natural and unconscious division has been made in the field of legislation; that the legislators have taken control of all questions which directly involve a social interest (public law), but have left to

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the courts those matters in which the interests affected are primarily individual (private law).[1] From the standpoint of the state, this adjustment is satisfactory; from that of the nation, it is not. There are many questions which fall within the domain of public law, and of which our state legislators have assumed control, in which the nation has an interest higher than that of the state — the interest of unity. Our state legislators, rightly leaving the great body of our commercial law in the control of the courts, have generally enacted and have largely changed the law of commercial paper and that of interest and usury; and they have assumed almost entire control of the law of marriage and divorce.[2] In both cases they have acted rightly, from their point of view; for all these subjects involve direct public interests. But the result of their action has been disastrous to the country at large. It is precisely in commercial law and in the law of marriage and divorce, that the national need of uniform law is strongest. Diversity of commercial rules in the several states impedes and annoys business, for American business pays little heed to state lines. Conflicting laws of marriage and divorce unsettle family relations and undermine the moral basis of society.

The degree of confusion which our laws of marriage and divorce have reached, is a matter of common notoriety. It is possible, for example, that a man married in New York, divorced and re-married in Indiana, shall be the lawful husband of one woman in Indiana, and shall be regarded by the law of New York as the husband of another. By the law of Indiana his status is completely regular; by the law of New York he is a bigamist. He may have a second family of children, who by the law of Indiana are legitimate, but by the law of New York are bastards. It is needless to insist upon these facts, because the matter is already so universally regulated by statute that codification can do no harm. They are instanced here simply to

[1] The peculiar sense in which I employ these words, public and private, is explained in my previous paper, p. 122.

[2] See the data furnished by Mr. Stimson, *ibid.* pp. 117, 118.

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illustrate the tendency of our state legislations to diverge upon matters of national concern.

In the domain of commercial law, the case is different. There is already legislation enough, and enough conflict of legislation, to harass the business of the country. At every meeting of the American Bankers' association, for example, complaints are made and resolutions passed concerning the diversity of the bankrupt laws and the laws regulating commercial paper in the different states; and committees are regularly appointed to urge upon Congress the necessity of passing a national law of bankruptcy, and other committees to consider the possibility of obtaining more uniform legislation in reference to bills and notes.[1] But in the domain of commercial law, the inroads of the state legislations have been comparatively trifling. In the main, the law of movable property and of contracts is still common law, and its development is still in the hands of our federal and state judiciaries. Here then the general adoption of state codes will work a great change; and if our state legislatures, in assuming control of this field, show the same indifference to the business interests of the nation which they have shown to its moral interests in their treatment of the marriage and divorce laws, the results will be, not more serious, for nothing can be more serious than the demoralization of our people, but certainly grave in the extreme.

I think I have maintained the theses with which I opened this discussion:[2] that the ultimate effects of state codification are far more important than those which lie upon the surface; and that the relation of the movement to the general development of our law is vastly more important than its results for good or evil in any single state.

Considering, now, that a number of our states have already adopted complete civil codes, or codes which claim, at least, to cover the entire field of the common law; and con-

[1] The proceedings of the annual conventions of this association are regularly published, and can be obtained from the secretary, 237 Broadway, New York City. It is useless to cite years and pages, because *all* of the recent proceedings that I have examined contain these complaints and resolutions.

[2] See my previous paper, p. 105.

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sidering the pertinacity of the movement in other states, I am tempted to go beyond the original plan of this discussion and endeavor to forecast the ultimate consequences of this threatened denationalization of our law. If my views were the outcome of pure speculation, or the result of a balancing of probabilities, I should not undertake this task. But, on the contrary, they rest upon the experience of other nations, whose legal development, in its earlier stages, is so strikingly analogous to our own that I cannot avoid the conclusion that we are destined to traverse the further stages which they have completed or are completing. Shakespeare has stated very accurately the possibilities and the limitations of historical inference, in affirming that a man who observes "the nature of the times deceased"

> . . . may prophesy,
> *With a near aim, of the main chance of things*
> As yet not come to life, which in their seeds
> And weak beginnings lie intreasuréd.
> Such things become the hatch and brood of time.

V.

The evolution of continental European law, since the sixteenth century, may be summarized, roughly, as follows: general or common law is gradually destroyed by local codes, and these local codes are ultimately replaced by national codes. To comprehend this development, we must start far back of the sixteenth century. We must go back to the overthrow of the West Roman empire, in the fifth century, and follow, at least in its main lines, the movement of European law during the intermediate thousand years.

The conquerors of the Roman empire were barbarians. They swept away, not the rule of Rome only, but its civilization. They did not attempt to maintain and enforce its laws; they lived by their own simple tribal customs. On the other hand, they made no systematic attempt to destroy the Roman law or to force Germanic usages upon the conquered Romans. They suffered these to live by their own law. But in the wreck of

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the Roman civilization, the Romans had no longer any use for a highly evolved system of jurisprudence. The Roman law survived only as a body of adages and rules — the local custom of separate communities.

In the midst of this general destruction, something — and not a little — was saved by the church. The German conquerors were, or soon became Christians. They left the organization of the church intact, and suffered it to control its own personnel and to manage its own affairs. It did this, and more. It assumed many state functions, which the rude governments of the middle ages were unable to discharge. It cared for education and dispensed charity. It drew into its domain the entire control of the family relations. It undertook, partly in its own interest, to enforce testaments. It was able to do all this, because it had brought over from the Roman into the mediæval world a well-developed governmental organization. It added to this a complete system of courts, with appeal to Rome. In the exercise of its judicial powers, it developed an extensive body of law — the *jus canonicum*.

The states that arose on the ruins of the empire — if the kingdoms of the Goths, the Burgundians and the Franks can be called states — confined their governmental activity to military affairs and the maintenance of the peace. The popular courts administered the rough justice of the time, which consisted chiefly in the redress of torts. It was not until one of these states conquered and annexed the others and the kings of the Franks became rulers of Christendom, that the legal development of Europe entered upon a new phase. Charlemagne, especially, laid the basis for a development of German usage into European law. He imposed upon the different tribes a body of imperial laws, passed with the consent of the magnates, and a body of equity law developed and enforced by a king's bench and a system of circuit courts. He brought the county courts more fully under central control, and introduced numerous reforms in procedure. But all these innovations perished with the destruction of the Carolingian empire. The kingdoms which established themselves in its place were king-

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doms in name only. They were feudalized from top to bottom. The offices of the empire became hereditary fiefs, and the magnates petty princes. Nor did the disintegration of the state stop with the independence of the crown vassals: the sub-vassals fought themselves, and later the cities bought themselves, free from all real control. The development of law became wholly particularistic. Each province, each city, each village and each manor even, evolved usages which, as local custom, overrode any higher law. Besides this local divergence, there arose distinctions of class: one law for the noble, another for the burgher, another for the free peasant and still another for the villain. And across the entire network of local laws and local courts, stretched the independent jurisdiction of the church. This state of things lasted, to fix a rough boundary line, until the latter part of the thirteenth century.

In England, the conditions were quite different. The Norman conquest had given the island a strong monarchy. In England, the Carolingian institutions reappeared: king's bench, circuit courts, local judges appointed by the crown—an orderly and centralized administration of justice. The national common law of England was already in process of development.

On the continent, nothing of the sort was possible. Neither in France, Germany nor Italy, was there any power capable of centralizing justice and creating national law. But European commerce had come to life again and assumed great importance, and the diversity and the resulting uncertainty of law were intolerable. The result was the singular historical phenomenon which we call the "reception" of the Roman civil law. In Justinian's digest the Italian jurists of the twelfth century found a system of law that was adequate to the needs of the new commerce. Schools of Roman law sprang up in Italy, were visited by students from all parts of Europe, and sent out masters and doctors by the hundreds. Returning to their homes, the civil doctors crowded the hereditary expounders of local usage off the judicial bench; under the fostering care of the kings and princes, there appeared a "learned judiciary." The law the doctors had learned was nearly a thousand years old

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and was written in a dead language, but it was not regarded by them, nor by their countrymen, as foreign law. All authority in Europe was derived ultimately from the Roman empire, and the Roman law was the law of the "sacred predecessors" of the German emperors and the French kings. Thus continental Europe obtained a common commercial law in the *corpus juris civilis*, as it had obtained a common family law in the *corpus juris canonici*. This development was completed, roughly speaking, in the sixteenth century.

It should be noted that both these legal systems, although embodied in what are called codes, are systems of case law. The most important part of Justinian's compilation, the digest or pandects, is essentially a collection of decisions upon stated facts; and most of the imperial constitutions are nothing more. The same is true of the code of canon law compiled by Gratian about 1140, and enlarged by the addition of later decretals; for the papal decretals were usually decisions of actual cases. As case law, these codes were treated by the jurists and the courts with a certain scientific freedom, very much as our common law is treated by our courts. The *dicta* of the Roman jurists, emperors and popes were not construed like statutes. And for this reason again, the courts were able to develop new law from the old, finding the needed rules by analogy or deduction, precisely as do our courts. So there grew up, on the basis of the Justinian digest, a *novus usus pandectarum;* and the development of law kept pace, after a fashion, with the needs of society.

It should be noted, again, that these systems were "received" as subsidiary law only. Local law, whether written or customary, prevailed; and only in its absence was common law applicable. But the civil doctors had little love for local usage, and demanded clear and complete evidence of its existence; which was not always easily obtainable. Thus in Germany the Roman civil law, especially during the period of the reception, overrode and destroyed many rules of German customary law.

The reception, as I have said, was completed in the sixteenth century. Since that time, this subsidiary common law, resting upon and developed by judicial decisions, has been replaced

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everywhere save in a portion of Germany, and is in process of being superseded in Germany also, by codes of a statutory character, enacted by the legislative power. From these facts it is customary to draw the simple inference that code law is better than judge-made law. But a careful study of European codification[1] leaves this apparently obvious inference doubtful, and suggests other — and, I think, far more important — conclusions.

In France, the particularistic development of law was checked, after the thirteenth century, by the growing power of the monarchy. The kings became strong enough to make the parliament of Paris a supreme court of appeal for the whole of France, and to control the procedure of the local courts. This judicial centralization gradually lessened the diversity of the local laws, but it came too late to enable the royal courts to develop a common law. In the southern provinces, where a rude form of Roman law had maintained itself, the Justinian law-books were received, but only as subsidiary law; they prevailed only when the provincial customs furnished no rule of decision; and the provincial customs were themselves subordinated in the same way to the custom of each locality. In the northern provinces, single institutions and rules of the Roman law were adopted, but the *corpus juris civilis* was not received. The law remained customary. In course of time the customs were all reduced to writing, *i.e.*, codified; at first, in the thirteenth century, by private enterprise; later, in the course of the fifteenth and sixteenth centuries, under royal direction. Royal codification involved many changes or "reformations," largely in the direction of greater unity of law. But more was

[1] For the whole movement, but especially for Germany, see Behrend, Die neueren Privatrechts-Kodifikationen, in Holtzendorff's Encyclopädie der Rechtswissenschaft, 4. Aufl. (1882). For France in particular, see Zachariä, Handbuch des französischen Civilrechts, Bd. I, §§ 7 ff., and Schäffner, Geschichte der Rechtsverfassung in Frankreich, Bd. IV, S. 304 ff. For Italy, Huc, Le Code civil italien et le Code Napoléon (1868), § 1, and authorities there cited. For Switzerland, de Riedmatten, Notice sur le mouvement législatif en Suisse, et spécialement sur les derniers projets de codification, in the *Bulletin de la Société de legislation comparée*, 1880, pp. 455 *et seq.*

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accomplished in this direction by the royal power of ordinance, which, as the monarchy became more absolute, developed into a general power of legislation. The *Ordonnance civile* of 1667, the *Ordonnance criminelle* of 1670, and the *Ordonnance de commerce* of 1673 were practically codes of civil and criminal procedure and of the law merchant. But at the outbreak of the Revolution, in spite of all these reforms, France was far from possessing unity of law. The *pays du droit écrit* in the south and the *pays coutumiers* in the north had fundamentally different systems: the one was Germanic, with Roman infiltrations; the other Roman, with Germanic excrescences. In the conquered eastern provinces, the Netherlands and the *terres d'empire*, the legal systems were again divergent. And within these four great divisions were hundreds of codified customs, provincial and local. This state of things was intolerable. Unity of law was one of the popular demands in 1789. The "complaints and grievances" which the delegates of the local estates carried up to the Estates General in that year, were full of protests against this "diversity of customs, which, so to say, makes the subjects of the same realm, and often of the same province, foreigners to each other." It was demanded "that the provinces sacrifice to the nation their particular constitutions, capitulations and treaties," and that "a common law," "a general, uniform, national code" be established for all the realm.[1] The revolutionary assemblies declared, from time to time, in their laws and constitutions, that this should be done; that "a general and uniform code of civil laws" should be established;[2] and the Convention caused a code to be drafted, but rejected the draft because it contained "no new and grand ideas, suitable to the regenerated France." Law was being made and unmade too rapidly to permit codification. It was not until the revolutionary storm had spent its force, and the first consul had established a strong and conservative government, that the desire of

[1] Cahiers des États Generaux: I, 747 (Amiens); II, 524 (Cambrai); II, 593 (Chalons sur Marne); III, 83, 84 (Vienne); III, 100 (Bayonne); IV, 260 (Montreuil sur mer); V, 288 (Paris *intra muros*); V, 571 (Riom); VI, 230 (Fismes).

[2] L. 16 (24) août, 1790, tit. 2, art. 19; const. 3 (14) sept. 1791, tit. 1 (*in fine*); const. 24 juin, 1793, art. 85.

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the nation could be realized. When Portalis introduced the first sections of the civil code into the *Corps Législatif* in 1803, he indicated, tersely and accurately, the causes which had led to codification, in declaring:

> Up to this time the diversity of our customs constituted, in one and the same state, a hundred different states. The law, opposed everywhere to itself, divided the citizens instead of uniting them. This condition of things could not last longer.

And Grenier answered, in the same strain:

> As regards the diversity of its laws, France was in almost the same state in which Cæsar found it: *Hi omnes linguâ, institutis, legibus inter se differunt.*[1]

Italy, which had given Europe common law, was unable to keep its own law common. Unlike the other nations of Europe, the Italians had not even the semblance of a national organization; and the development of law, whether by judicial decisions or by legislation, was necessarily particularistic. In the kingdom of Naples and Sicily, a civil code based upon the code Napoleon was published in 1819; and the kingdom of Sardinia was governed by a code of its own after 1838. In the other states, the basis of the law was Roman; but the development of this law was not uniform, and the superimposed statute law was of course different in each state. The Italian jurists reckoned four or five "principal systems" of law in the peninsula. As soon as Italy obtained a central government and a national legislature, the Italians gave themselves a national law. The work began in 1860, and the civil code was published in 1865.

The completed reception of the Roman law in Germany, and the beginning of a reaction against its rule, are almost synchronous. Germany had obtained a common law, but it was after all foreign law. Many of its rules seemed unnatural to the German instinct, and were not adapted to the needs of

[1] Code civil ou recueil des lois qui le composent, avec les discours, rapports et opinions (Paris, 1806), I, 2, 34.

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German society. Moreover, the enthusiastic devotion with which its theoretical symmetry inspired the civil doctors had resulted, as we have seen, in the reception of many rules of Roman law at the cost of genuine German law, embodied in unwritten local usage. But organs for the creation of national law were wholly lacking. The empire had been losing ground and the "territories" gaining independence since the thirteenth century. The result of the religious wars in the sixteenth and seventeenth centuries was the definite disintegration of Germany. There were imperial courts; but the more important states obtained exemption from appeal. There was an imperial diet, theoretically capable of legislation; but after passing a criminal code (with great reluctance and with careful reservation of established local usages) in the reign of Charles V, this body lapsed into permanent sterility. In the eighteenth century the empire was a mere shadow, and this shadow was destroyed by the revolutionary wars. In 1815 Germany was reorganized as a confederation of sovereign states — a confederation destitute of executive, judicial or legislative authority.

From the period of the reception, accordingly, the development of the law rested with the single states. In the seventeenth century, collections of local "statutes" began to be made. These were merely rules of German customary law. In the eighteenth century, attempts were made to codify the subsidiary Roman law also, in order to remove uncertainties that had arisen in the practice of the courts. So there came into existence the Prussian (provincial) code of 1721, and the Bavarian code of 1756. In both cases, the common law remained subsidiary to the code. Very different in purpose and character were the Prussian code of 1794, the Austrian code of 1811 and the Saxon code of 1863. These law-books endeavored to fuse the subsidiary Roman law and the local German usage; they were really codifications of the entire state law. The Prussian code left divergent provincial customs in force; but the Austrian and Saxon codes swept them away. All three abolished the subsidiary common law of Germany. Finally, during the revolutionary wars, the code Napoleon was introduced in the

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western part of Germany, and it remained in force in Baden and the Prussian Rhine province after the overthrow of the Napoleonic empire.

The abrogation of the "foreign law" was a relief in the codifying states, but the destruction of the common law was felt to be a disadvantage to Germany. The movement for unification of the law, for the creation of a national German law, began early in this century. Thibaut's pamphlet, *On the necessity of a general civil law for Germany* (1814), called forth Savigny's famous reply, *On the vocation of our time for legislation and jurisprudence.* Savigny took the ground that German legal science was not ripe for the undertaking, and also set forth the objections to code law in a way that has never been surpassed. That nothing came of Thibaut's suggestion was due less to the force of Savigny's arguments, than to the fact that the German confederation had no legislative power. Popular dissatisfaction constantly increased, and the popular demand for national law, especially in commercial matters, grew steadily stronger. The German parliament of 1848–9 took measures for the codification of the commercial law; but the revolutionary government did not last long enough to complete the task. The plan was taken up again in 1856, at the suggestion of Bavaria, and a commercial code was actually drafted. The Federal Diet had no power to enact this code; but it was adopted, with slight modifications, in all the single states.

The establishment of the North German confederation in 1867, and of the German empire in 1870, gave Germany a strong federal government. The constitution gave the federal legislature complete control over criminal law, civil and criminal procedure, and commercial law; and in 1869 the commercial code was revised and made federal law, in 1871 a criminal code went into force and in 1877 a code of civil and criminal procedure. In the domain of civil law, the constitution gave to the federal legislature power over obligations only. In the constituent parliament of 1867, an amendment was proposed bringing the entire civil law within the federal competence; but the bill failed to obtain a majority even in the

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popular branch of the legislature, the Imperial Diet. In 1869 the same amendment was passed by the Diet, but was thrown out by the house of states, the Federal Council. The same thing happened in 1871 and 1872; the Imperial Diet passed the amendment and the Federal Council rejected it. In 1873 the amendment was passed a fourth time by the Imperial Diet, and resolutions in its favor were secured from the legislatures of the two most important states, Prussia and Bavaria. The Federal Council thereupon abandoned its opposition, accepted the amendment, and appointed a commission to draft a German civil code. This commission has been working ever since; with German deliberation, certainly, and, it is to be hoped, with German thoroughness also. The preliminary draft is now completed and will soon be published.

The debates to which this amendment gave rise, both in the imperial and the state legislatures, are full of interest and suggestion. It is pointed out that there are four principal systems of law existing in the empire, namely, the Prussian, French and Saxon codifications and the common law, with an infinite number of local variations. In the Imperial Diet, the National-Liberal deputy Miquel said:

> I believe all thoughtful jurists agree that such a state of things cannot continue, now that we have a common German representative body, capable of expressing the will of the whole people; that as a nation we must desire to set in the place of these various codifications a common German law.[1]

In the Bavarian chamber of deputies, the minister of justice, von Fäustle, declared:

> We are dealing here, gentlemen, with a domain in which the German efforts toward unity first made themselves felt. . . . While in earlier times, in the main at least, the common law mediated the inner community of the German legal life, it became evident after the dissolution of the German empire that the numerous particularistic developments of law and the efforts of the several states to proceed independently in the establishment of their private law . . . worked harm only. Our legal life and science were thereby deprived of that inner community, the destruc-

[1] Verhandlungen des 1. deutschen Reichstags, 2. Session, S. 206 (Oct. 25, 1871).

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tion of which was necessarily as prejudicial to the scientific culture of the law as to the satisfaction of the practical needs of the nation.[1]

The opposition in the Imperial Diet, as in the Federal Council, was based on state-rights theories. The leader of the Guelphs, Windhorst, declared that the adoption of the amendment meant the destruction of the federal character of the German union, and the abasement of the German sovereigns to the position of the *Standesherren*. "In twenty-five years," he asserted, "the house of Wittelsbach will hold the position which the house of Hohenlohe holds now." To this the most distinguished of living publicists, Professor Rudolf Gneist, responded:

> If I took the federalistic point of view, I should feel bound to support just this proposal, because it establishes the sole condition upon which the independence of the single states in matters of internal administration can be maintained. For the centralization of administration does not arise through uniform legislation, adapted to the situation and to the needs of the time, but through the lack of organs for such legislation, which forces the state to furnish what is needed by the organization of a centralized bureaucracy [durch die Gewalten der Executive des Präfectenthums].[2]

In comparison with the great national movements described above, the legal development of the smaller states of Europe is of slight importance. In many cases, through a natural dislike for legal isolation, these states have adopted codes patterned on those of their greater neighbors, or of the countries with which their commercial relations are most important. But there is one of these smaller countries which is developing, by codification, an independent system of law, and in which the movement is of especial interest because the form of the state, as in Germany, is federal.

The Swiss cantons did not receive the Justinian law when it forced its way into the rest of the empire. The conditions of life were so primitive that the old local usages were amply

[1] Speech of Nov. 8, 1873, reprinted in Hirth, Annalen des deutschen Reichs, 1874, S. 329 ff.

[2] Verhandlungen des 1. deutschen Reichstags, 4. Session, I, 176 (April 2, 1873).

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sufficient. As the confederacy grew in size and its civilization became less simple, no federal law was developed, because the confederation possessed no law-making powers. These resided in the single cantons. Each canton, accordingly, went its own way. Six or seven established codes copied, with more or less modification, from the code Napoleon. About the same number followed the Austrian model. Zurich enacted an independent codification of its own. The rest of the cantons lived by their old customary law, more or less fixed by decisions and more or less modified by legislation. Switzerland thus possessed a variety of legal systems fairly comparable to that which obtains in Germany.

This diversity of legislations produced the usual reaction, a movement toward unity. The obstacle to any thorough reform lay, as in Germany, in the constitution. In 1872 a constitutional amendment was submitted to the people, bringing the whole civil law within the legislative competence of the confederacy; but it failed of adoption. In 1874 a general revision of the constitution took place; and the revised constitution, which was accepted by the people, gave the federal legislature control of marriage, civil status, civil capacity, all matters relating to commerce, transactions concerning movables, literary and artistic property, the prosecution of debt, and bankruptcy. In 1881 federal laws were passed regulating civil capacity and obligations. The law of obligations is practically a code of commercial law in the widest sense, including the law of contracts and that of movable property.

VI.

The preceding sketch of European codification yields some important results. The movement in Europe to-day is national. Its object is to substitute uniform law for divergent local legislations. The relative merits of case law and statute law have not been and are not in question. The issue, in many cases, is between a single national code and a variety of local codes; in all cases, between national law and local law. And in every

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case the decision has fallen in favor of national law. From this point of view, the fact that France and Italy have codified their civil law, and that Germany is about to follow their example, is no reason why New York or any other American state should codify. The movements are not analogous, but diametrically opposed. In Europe, the purpose of codification is to obtain common national law; in this country the effect of state codification is to destroy our national common law.

To obtain any analogy to the movement now in progress in our country, we must go back of the European movement of to-day. State codification in the United States falls in line with the codification of the provincial customs of France; with the Neapolitan and Sardinian codifications in Italy; with the Prussian and Saxon codifications in Germany; and with the cantonal codifications of Switzerland. But when we make this comparison, we must remember that in all these countries the local development of law was the result of the non-existence or the atrophy of all central law-making organs. In no case were active and productive central organs deliberately put out of action; in no case was the development of national law deliberately arrested. It has been left to American codifiers to propose this — for the first time in legal history.

It should be remembered, finally, that the whole development of continental European law differs from that of the English law in one fundamental point. The Norman conquest gave England a centralized governmental machinery and made the gradual and organic development of national law possible. The destruction of the Carolingian empire left Europe without law-making organs. Lacking these, no European state was able to develop common national law; and this inability resulted in the general acceptance of foreign law. Accordingly when the nations of Europe worked their way out of feudalism and developed effective governmental organizations, they naturally proceeded to rid themselves of the foreign law by substituting law of their own making. But the only method by which this could be done was codification: local codification, if the law-making power was local; national codification when the legislative power became national.

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The agitation for codification in England, to-day, is in line neither with the continental movement nor with the American. It has neither the reasons in its favor which justify national codification in Europe, nor the reasons against it which militate against state codification in this country. The European codes substitute national statutes for local statutes. American codes substitute local statutes for common case law. England, if it codifies, will simply substitute one form of national law for another, statute law for case law.

Finally, the study of the codification movement in Europe gives us strong reason to believe that the ultimate result of the general adoption of state codes in this country will be a transfer of legislative power from the state legislatures to Congress, and the ultimate re-nationalization of our law by federal legislation. Everywhere in Europe the demand for legal unity has been precisely proportioned to the amount of legal diversity. If patriotic impulses have had much to do with the demand for national law, as was notably the case in Italy, it is true on the other hand that the inconveniences and annoyances caused by conflicting local legislations have everywhere been a potent factor in fostering a spirit of national patriotism. All political feelings are the product and expression of social interests.

The history of the movement in Germany and Switzerland is especially suggestive, because in these federal states the proposal to increase the legislative power of the central government encountered prejudices precisely similar to those which exist in the United States. The triumph of the national idea in Germany and Switzerland was not the result of feeling, as in Italy, but of the overwhelming pressure of material interests. From this point of view, any indication, in the United States, that the divergence of state legislations is causing people to look to the federal government for relief, becomes of extreme importance. Any proposals to enlarge the legislative powers of Congress by constitutional amendment or change of constitutional interpretation, however sporadic they may be, are symptoms not to be slighted. The divergence of our state laws is causing most trouble, as we have seen, in the matters of mar-

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riage and divorce, and of commercial paper. Here, then, we should look for symptoms of an appeal to federal legislation; and here we find such symptoms.

The agitation for more uniform laws of marriage and divorce sometimes culminates in the demand that some association or committee of right-thinking and zealous citizens shall frame such uniform laws, and that sufficient pressure to compel their passage shall be brought to bear upon the several state legislatures. But if uniform laws are desirable, and if the state legislatures, in order that the laws may be uniform, are to be reduced to the position of assenting bodies simply, there seems no reason why their assent should be sought at all, or why the uniform laws should be framed by an irresponsible committee of reformers rather than by the elected representatives of the nation. Accordingly, the more radical demand is heard with increasing frequency — the demand for a constitutional amendment which shall give Congress complete and exclusive control of marriage and divorce. That so conservative a newspaper as *The* (New York) *Sun* favors this solution, is an excellent illustration of the pliancy of political theories under the pressure of social needs.

The conflict of state laws concerning commercial paper, and the annoyances and losses suffered in consequence by the business men of the country, have occasioned much discussion, as has been remarked already, at the annual conventions of the American Bankers' association. Here again we find that Congress is to give relief; and that Congress is to be enabled to give relief by a more liberal interpretation of the constitution. In 1882 the convention passed the following resolutions:

> That the executive committee be directed to ascertain: (1) The laws in the several states in regard to commercial paper, and especially the variations and differences therein. (2) Whether, under the constitutional power given to Congress to "regulate commerce between the several states," it is not competent for Congress to enact laws governing commercial paper drawn in one state upon a party in another, or made in one state and payable in another, so that such laws shall be uniform throughout the nation. (3) Whether it be expedient for Congress to exercise such power if the constitution confers it.

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It is an interesting fact that Hamilton thought that this clause of the constitution would cover such legislation.[1] The Supreme Court has construed the word "commerce" more narrowly; but if such a law as the above resolution contemplates were actually passed by Congress, in response to an urgent popular demand, it is not inconceivable that it might be pronounced constitutional.

Whether it be by change of constitutional interpretation or by direct constitutional amendment, there is no doubt, I think, that the nation will find a way to keep its law national. No theory of state rights, no jealousy or fear of centralization, will prevent so practical a people as ours from satisfying its real needs. If the encroachment of state statutes upon common law goes much further, if business relations become as uncertain and confused as marriage relations have become already, the state-rights theory will either disappear or, more probably, change its form. Like all political theories, it has a kernel of truth and expresses a real social interest. In administrative matters, the greatest practical development of local self-rule is not only desirable, but essential to the perpetuity of free government. This will be seen more clearly as our governmental problems become more complex and difficult; and the tendency to decentralize administration will probably result in an increased autonomy of our cities and counties. But it will be seen, also, that the making of laws concerning matters of national interest is no legitimate function of local government, and that an American citizen is no freer because these laws are made at Albany or Trenton than he would be were they made at Washington.

MUNROE SMITH.

[1] Works, Lodge's edition, III, 204.

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REVIEWS.

The Study of History in American Colleges and Universities. By HERBERT B. ADAMS. Washington, Bureau of Education, Circular of Information no. 2, 1887. — 8vo, 299 pp.

This will prove to be one of the most useful among the many interesting documents issued by the Bureau of Education. Professor Adams has by his investigation to a certain extent pre-empted the field of American historiography and particularly the history of instruction in this department in America. His claims to a monopoly in this line of research are the more readily allowed from the serious difficulties which at the outset confront the investigator. Professor Adams must have had great trouble in collecting his materials; he certainly could have found little in print to give him light except the dry statements of college catalogues. He has patiently gathered from the most scattered and obscure sources the facts out of which he has built this full and interesting account of what has been done in American colleges for historical studies. Without profound interest in the subject, and the genuine spirit of a historical student, the accomplishment of his task would not have been possible. What he has done here will be of lasting value. The next writer on the subject will have material in print.

The report is written in a hopeful and confident spirit, leaving the impression that the author finds the prospects for historical study in our colleges in the main promising. The leading conclusions which the work suggests are the newness of anything but mere gymnasial instruction in history in our colleges; the unsystematic, text-book character of that instruction in former years; and the earnest efforts put forth, particularly in the past decade, to introduce an entirely new order of things. The new movement manifests itself in the gathering of material for original investigation in the historical and political sciences; the erection of academic chairs for instruction in the methods and results of such higher investigation; the foundation of fellowships, special libraries, and in many cases special departments or schools for this work. Particularly instructive is the account of the work at Harvard, Columbia, the University of Michigan, Cornell and Johns Hopkins. The authorities of these institutions could not do better than reprint the chapters devoted to their respective schools to show the public what they are doing. But the whole document is receiving the widest circulation.

GEO. H. BAKER.

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The United States and the Northeastern Fisheries. A History of the Fishery Question, by CHARLES B. ELLIOTT, LL.B. W. T. Cole & Co., The University Press, Minneapolis, 1887.—151 pp. and map.

This paper was prepared by the author as part of the work of a candidate for the degree of doctor of philosophy at the University of Minnesota, and is one of the most exhaustive articles on the subject that has appeared during the recent discussion of this vexed question. The author divides his work into three parts. First comes a history of the question; then a discussion of the interpretation of the treaty of 1818; and at the end is an appendix containing tables of statistics and a map.

The historical part, beginning with the earliest discoveries of the fisheries, outlines their development and the various treaties of England with other powers concerning them, down to the treaty of peace with the United States (1783). The author then describes clearly and with much detail the subsequent treaties between Great Britain and the United States and the diplomatic negotiations relating thereto. The principles of international law involved in the interpretation of the treaty of 1818 are set forth by quotations (very neatly knit together) from various writers on public law. Mr. Elliott gives evidence of considerable research in the discussion of the question whether the inhibited three mile limit means, as the United States claim, three miles from the shore following all its sinuosities or, as Great Britain claims, three miles from a line drawn from headland to headland; and he makes out a good case in favor of the interpretation held by our government.

The author frequently gives foot-note references to books and papers that are far from being original authorities for the statements made in the text. For example, on page 35, Mr. Elliott writes: "George III urged Shelburne to propose to Louis XVI the denial of the fisheries to the Americans," and cites Isham's recent publication — a book which does not pretend to reveal for the first time any original evidence on this particular point. If Mr. Elliott thought that this statement was not well enough known to stand without a citation of authority, it was worse than useless for him to cite a book in which the assertion obviously rests on a much earlier authority. It seems impossible that Mr. Elliott would have us believe that the recent books frequently cited by him to substantiate ancient facts represent the limits of his investigation.

In conclusion Mr. Elliott seems to suggest that it would be best for the interests of the United States to stand upon her rights under the treaty of 1818 and leave it to the administration at Washington to protect the American fishermen by the enforcement of the retaliatory law passed by the forty-ninth Congress (1886–7).

THOMAS D. RAMBAUT.

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Publications of the University of Pennsylvania. No. 2: The Anti-Rent Agitation in the State of New York, 1839–1846. By EDWARD P. CHEYNEY, A.M., Instructor in History, University of Pennsylvania. — 64 pp.

Mr. Cheyney has given an orderly though not very full account of the origin of the manors and great estates in the state of New York, and of the final disorders resulting from the settlement on only leasehold tenures of hundreds of thousands of acres of the fairest land in the province and state, which disorders resulted in turn in the practical abolition of the great landlords' estates and the conversion of the leaseholds into absolute titles.

Mr. Cheyney's legal phraseology is sometimes inaccurate; for example, he speaks on page 29 of a tract which "was leased in fee." He has overlooked serious anti-rent disorders which arose in connection with the disputes over the boundary between Massachusetts and New York, and which continued during the whole of the latter half of the eighteenth century. He has also missed an opportunity to describe as ingenious and unblushing a bit of land grabbing as any Irish patriot, prairie congressman, or anti-monopolist ever frothed about, in describing as "mysterious" the way in which the Livingston possessions were swelled from an estate of less than 2000 acres into a manor of nearly 200,000 acres. (Page 8.) It does not appear from the petitions of Livingston, the several governors' decrees thereon, and the accompanying maps in the *Documentary History of New York*, that it was mysterious at all; neither does good ground appear for believing that it was honest.

Mr. Cheyney has, however, put into accessible form an intelligent account of one of the most interesting and instructive chapters in American history. He shows how more than one-half the acreage of New York passed into the hands of a small number of proprietors, who undertook to retain the title, and procure the settlement and cultivation of these lands by tenants; he shows the onerous nature of the leases, and the effects of the "quarter sales," which was really the payment of a feudal fine on the sale of the land; and he describes the disorders and crime caused by the endeavors of landlords to enforce their rights under the leases, and the final conversion of the lands into estates in fee. Many of the features of the anti-rent agitation described by Mr. Cheyney would repay study by the newspaper writers on Irish affairs at the present time. The story of the resistance to eviction, obstruction to the service of legal process and refusal to pay rents, and of the outrages committed by "Indians" in New York and "moonlighters" in Ireland, is much the same in the two countries; and the story of the way in which the law was enforced in New York and the grounds for grievance removed,

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is worthy the attention not only of our own newspaper statesmen, but of Irish secretaries as well

FREDERICK W. WHITRIDGE.

The Kentucky Resolutions of 1798. By ETHELBERT DUDLEY WARFIELD, A.M., LL.B., Barrister-at-Law. G. P. Putnam's Sons, New York & London, 1887. — 203 pp.

The author of this *brochure* has undertaken to prove three theses directly, and one indirectly: — (1) That John Breckinridge more than shares with Jefferson the honor of drafting the Kentucky resolutions of 1798. Mr. Warfield compares the former to the sculptor, and the latter to the chiseller who merely applies technical skill to the realization of the artist's ideas. (2) That the reasoning of the Kentucky and Virginia resolutions lies at the base of the Hartford convention and of the secession movement of 1860–61; but (3) That the Jefferson resolution[1] alone is responsible for South Carolina nullification. (4) Indirectly he maintains that the Kentucky and Virginia resolutions contain the great conservative principle of the republic.

It is not worth while controverting these theses in so many words. Mr. Warfield presents the letter from Jefferson to Jos. Cabell Breckinridge in which Jefferson says that while conversing over the Alien and Sedition laws with W. C. Nicholas and John Breckinridge, he proposed a protest by some state. These two gentlemen begged Jefferson to draw up such a document, and Breckinridge offered to present it to the Kentucky legislature. Jefferson drafted the resolutions and presented them to Breckinridge. The author then presents us with Jefferson's draft and with the Kentucky resolutions, in which the first seven articles coincide almost literally, the last two varying very little the one from the other, and asks us to credit Breckinridge with the political insight that formulated the issue over which party war was waged until reconstruction was complete. The second and third theses fall with the first; and the conservative vigor of the Kentucky and Virginia resolutions was exerted in vain in the war of the rebellion.

ROBERT WEIL.

Le Gouvernement et le Parlement brittaniques. Par le comte DE FRANQUEVILLE, ancien maitre des requêtes au Conseil d'État. Paris, J. Rothschild, 1887. — 3 vols., xii, 595, viii, 567, vii, 575 pp.

If the title of the work before us were reversed, it would perhaps give a fairer idea of the exact intention with which it is written. Two of its

[1] Jefferson, Works, book iv, part vi, p. 39.

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three volumes are devoted to the consideration of the Parliament, and only one, the first, to the organization of the executive power — *le gouvernement.* The second volume describes the formation of the Parliament, and the third its procedure and action. M. de Franqueville approaches his subject with far greater advantages than usually fall to the lot of a man who endeavors to depict the workings of a foreign system of government. A wide knowledge of English institutions, obtained as well from personal observation as from a perfect acquaintance with English literature, enables him to write with ease and confidence. Indeed, M. de Franqueville's studies of English institutions extend over a period of thirty years. In 1875 he published a treatise, in four volumes, upon English public works, which gained him recognition as an authority upon this subject. It is most fortunate for political science that, at a time when English affairs are attracting so much attention, a publicist whose knowledge of English law and life is hardly to be surpassed should give us a work of such importance as M. de Franqueville's *British Government and Parliament.*

The method of treatment which the author has adopted is a peculiar one, and yet at the same time one whose advantages for the student cannot be over-estimated. He takes up singly each part of what he calls the great mechanism of the British constitution and traces its history from the beginning. The student who desires to investigate a particular point is enabled, by this arrangement, to find all the details of which he is in search massed in one place. This method of treatment, reinforced by an excellent index, makes M. de Franqueville's work invaluable as a book of reference.

It should not be inferred, from what has been said, that the book is of interest and value to the special student only. On the contrary, M. de Franqueville's style is so charming, and his presentation of the most involved questions is so lucid, that no one interested in political matters can fail to read his book with pleasure. It must be admitted, however, that his desire to make everything clear and to give an exact idea of the way in which the English government is carried on leads him into repetitions which seem needless. For example, after describing the procedure of Parliament in private legislation so elaborately and carefully as to make it inconceivable that any one who would attempt to read a book of this character should misunderstand or fail to understand his description, he deems it necessary to give the history of an actual private bill by means of extracts from the journal of Parliament. But it is invidious to censure a writer for making matters too clear, or to insist upon economy of space at the cost of labor to the reader.

Our author is not only clear, he is thorough. No subject is treated carelessly or superficially. The defect of this virtue is a love of detail,

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and M. de Franqueville is perhaps chargeable with this fault. But his details, if not essential, are commonly interesting, and serve to lighten the narrative. In connection with the right of suffrage and the exercise of this right by women, he cites a writ of the year 1555 for the election of members of Parliament, on which was inscribed the following:

> Witnesseth that the said Dame Elysabeth Coppley of Gatton in the seid countie, widowe, according to a writt to her in that behalf from the seid shereve directed, hath on her free election nominated and chosen Humfrey Moseley gent, and sir Harry Housie Knt. to be burgeses for the said borowe. Signed by me, Elizabeth Coppley.

Of the three volumes the first, it seems to me, is the most valuable. For while the literature of the Parliament is very full, that on the executive — *le gouvernement*, as M. de Franqueville, following French usage, calls it — is comparatively meagre. In the latter part of the work, devoted to Parliament, one of the most interesting points is the description of the election laws. To the discussion of these laws, which at this moment are attracting so much attention in our country, eight chapters are given, of nearly three hundred pages; and I do not know any better presentation of the subject. Of especial interest, again, is an elaborate description, filling a large part of the third volume, of the Parliament's rules of procedure. These, in M. de Franqueville's opinion, are open to serious objections, which he states in a separate section; and some of his criticisms are of especial interest to Americans, since they apply as well to our legislative system as to the English. Most of the usages which he criticises have, as he shows, no real *raison d'être*, but are the result of a long historical development, and have a place now in the system simply on account of the force of tradition, so strong in England. Especially objectionable, in his view, is the way in which the House of Commons persists in resolving itself on all occasions into a committee of the whole. For this practice he can find no reason whatever, except that in old times, especially during the reigns of the Tudors and the Stuarts, the House of Commons really had reasons for not wishing to be presided over by the speaker, who was often regarded as a spy and agent of the king. By resolving itself into a committee of the whole under the presidency of one of its own members, it avoided the necessity of having the speaker present, and finally came to adopt this method of deliberation whenever anything of importance was discussed. But, as M. de Franqueville well says: "Les temps sont bien changés et le speaker est aujourd'hui, tout autant que le président des comités, l'homme de la chambre." He thinks that if this custom were abandoned, there would be less complaint of lack of time. This particular

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criticism does not affect us so much as does his objection to the practice of reading all bills three times — a practice which prevails in all American legislative assemblies and which has come down to us from the time when printing was not common and bills were really read. M. de Franqueville thinks, and it seems justly, that the first reading, as followed at present, might well be dispensed with. He thinks also that the French plan of printing and distributing with a bill an *exposé des motifs* would be a vast improvement on the present English plan of having a "statement" in regard to the bill made by some member of the House who is particularly interested in its passage — as a general thing a minister.

Another criticism of the English system, which we also might well take to heart, is directed against the absurd and verbose fashion in which the statutes of Parliament are drawn up. Any one who has had occasion to compare the statutes of England and of the United States with those of the states of continental Europe, cannot fail to be struck with the great relative simplicity of the latter. Indeed, the English system possesses no single advantage — not even that of certainty of interpretation. For notwithstanding the precautions that are taken to have all bills drawn up by suitable persons who are accustomed to the work, the obscurity of statute law has aroused almost the same amount of complaint in England as in this country.

Notwithstanding his French nationality, which ordinarily carries with it the tendency to glorify the French people, M. de Franqueville has preserved an almost rigid impartiality. Here and there, however, he cannot hide his contempt for certain characteristics which the French are determined to regard as especially English. For instance, in comparing the attitude of the people of England toward the despotism of the Tudors with their later position over against the Stuarts, he cannot help exclaiming: "Les Anglais faisaient bon marché de leur conscience et peu leur importait qu'elle fût odieusement violée, mais quand on voulut s'en prendre a leurs bourses l'orage se déchaina violemment."

He is less successful in holding his religious and political prejudices in abeyance. A devout Catholic, he cannot resist the temptation to drag into his description of the organization of the House of Lords a long and wholly needless tirade concerning the oppressions to which his co-religionists were formerly subjected. A strong monarchist in politics, he cannot conceal his contempt for popular government and especially for French popular government. But in spite of his hatred of democracy, he has a firm belief that England is going to pass successfully through the trials which, in his opinion, the recent adoption of an almost universal suffrage will necessarily entail. Though he believes that the aristocracy alone was capable of founding the British constitution, he believes

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also that the democracy will be able to preserve it: "Si un homme de génie pouvait seule construire cette incomparable merveille que l'on nomme le Parthenon, un vulgaire architecte peut en assurer la conservation." M. de Franqueville's opinions in regard to the general trend of things in England are to be found in his final chapter on *La démocratie en Angleterre*, which is a most fitting conclusion of a most suggestive and valuable work.

FRANK J. GOODNOW.

Deutsches Wirtschaftsleben im Mittelalter. Von KARL LAMPRECHT. Leipzig, Verlag von Alphons Dürr, 1886. — 3 Bände mit Karten; 1640, 783, 608 pp.

This work is one of the monuments of industry and learning, which, as a rule, only Germans create. It is clearly the most important contribution yet made to the history of mediæval agriculture, if not the leading work yet produced in the whole domain of historical economics. Its advent should be hailed not only because of the vast accumulation of systematized knowledge which it contains, but because it indicates the high degree of perfection which the science of economics is destined, with the help of the historic method, to attain. The honor of breaking the path into the field of investigation before us belongs above all to von Maurer. Other economists, notably Hanssen and Giercke in Germany, have labored in the same department. Jurists have often treated the subject from the standpoint of their science. But Lamprecht is the first to give to the world what is in substance a complete picture of the life and development of the middle age so far as they were connected with agriculture. For the period previous to the twelfth century, and within the territory studied by the author, the work is practically exhaustive, because agriculture was then the only form of economic activity. Other works are promised in the future, which will treat of the agriculture of the lower Rhine district, and of the economic history of the cities.

The plan followed is briefly this: — The writer has confined his investigations to the valley of the Moselle and the adjacent regions extending to the neighborhood of Cologne on the north. The vast amount of original material to be studied made this limitation of the field necessary. But the territory covered includes the most important part of old Germany west of the Rhine. Its centre was the archbishopric of Trèves.

In the text of the work an effort has been made to subordinate details and facts of only local interest to that which is general, so as to bring into clear relief the main lines of development. The ample notes and

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the last two volumes of the work, which are composed entirely of quotations from the sources, afford sufficient proof of the thoroughness with which the investigation has been conducted. The second volume contains, as incidental results, two collections of statistical material, one respecting landed property, and the other concerning prices, each of which would form a respectable treatise by itself.

The fact is fully recognized that the economic is only a part of the larger social organism. Economic history, therefore, must be written with constant reference to influences exerted by law, by administration, and, in the middle age, by the church. Thus the author describes with great fulness the growth of governmental institutions, methods of control and local administration in the departments of finance, of the judiciary, of police, of war, and of ecclesiastical affairs, showing the play of action and counter-action between them and forces purely economic. He is not given to theorizing, yet he brings forward many facts which indicate that economic forces are fundamental.

To attempt even an outline of the work within the limits of this review would be impossible. The following are some of the topics treated in the order of their development: a full description of the physical characteristics of the valley of the Moselle, of the methods and progress of its settlement, the origin of its population, the beginnings of its agriculture; the history of its judicial institutions previous to the Carolingian era, with an investigation of their influence on the mark systems. The mark is described at length, and the history of all its parts fully traced. On the ruins of the mark system rose the large feudal estates, lay and ecclesiastical, in the tenth and eleventh centuries. These in turn disappeared as a system; and from among them, by accumulation of land under the control of especially able and fortunate families, were evolved the germs of the modern territorial state. These changes are described fully and with great clearness, and the whole is summed up in a brilliant concluding chapter of some fifty pages.

Lamprecht's view of the history of communal property in land among the Germans is in substance as follows: — Previous to Cæsar's time they were nomads. Their chief business was war. They treated land as other booty, a thing to be used in common by all the freemen of the tribe. No private property existed, because agriculture was in its rudest stages and population was not dense enough to demand much more than the plunder of war and the natural products of the soil. After the time of Cæsar permanent settlement began, and, instead of the tribe, the hundred became the owner of the land. Population began to increase more rapidly, a relatively more intense form of agriculture became necessary, and therefore strictly common property in the arable land disappeared. Only its usufruct remained to each village

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household. This process began before the time of Tacitus, and was greatly aided by the introduction of female inheritance by the early Merovingians. This led to efforts for the division of the mark, and to settlements on unoccupied forest lands under grants made by the king. The Frankish monarchs employed freely their right of eminent domain to aid this process. They were helped by, and in turn facilitated, a colonizing movement which lasted till the eleventh century. What was its result? At the beginning of the movement the assembly of the hundred — for Lamprecht considers the mark to have been the hundred in its economic capacity — still controlled to a large extent the property relations of its members. There was no freedom of settlement or recognition of the right of the individual to alienate land. The meadow and forest were wholly common property. The mark was still a close corporation. But at the close of the Carolingian period, the corporate estates of the mark — *Hufesystem* — had disappeared. They had been split up and were fast becoming private property. The same process had long been going on in the *Allmenden* — the meadow and forest — and was already approaching completion. Most of the unoccupied forest and waste land had also been taken possession of under royal grants. Thus we see that the movement was an enclosure of commons on a large scale, the beginning of a course of policy which is not completed yet. It was a great economic revolution, the first of the middle age. It destroyed the mark system, and freed the individual from the restrictions which that system laid upon his activity.

But the common man escaped from one form of social organization only to become the member of another, which rested upon him with a heavier weight. Upon the ruins of the mark system rose the *Grundherrschaft*, the system of large secular and ecclesiastical estates. The latter originated for the most part in gifts to the church. These were most numerous during the period of its greatest power, the eleventh and twelfth centuries. The former were gradually built up by the nobles through usurpation, immunity, and the enforcement of a system of taxes and services borrowed for the most part from the Roman law. The *Höfe* became *Fronhöfe*. The old-German freeman sank into the condition of a feudal vassal or serf. The noble rose to power by encroachments upon the prerogatives of the king and the independence of the peasantry. He based his power upon land, because that was the only important economic factor at the time. The estate of which he gained control was not compact, but consisted of parcels in many different localities. It was administered by the *ministeriales*, a higher class of feudal dependants. At their head on each estate was the *villicus* (*Meier*), who, with a corps of assistants, superintended all the agricultural operations, and collected the dues of all kinds from the tenants. The dis-

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tinctions between the free and the unfree, as they had existed in primitive German-times, disappeared. Judicial and military control passed into the hands of the nobles and their servants. The services and payments received from the peasant became so important that he was bound to the soil.

The system of the *Grundherrschaft* was at its height under the Saxon and Salian emperors. Then began economic changes which heralded its downfall. Its was a fixed system of rents, customary payments, and services. In the twelfth century the rise of the cities began, and with that the development of commerce. This was accompanied by another period of rapidly increasing population. Then it was that eastern Germany was colonized. But the most important economic phenomenon connected with this was a general rise of prices. The peasants profited greatly by this. As their payments were fixed, they absorbed about three-fourths of the increased value of the returns from the soil. It was a time of great prosperity for them, and of suffering for the nobles. The decline of the *Hufesystem* had taken from the lords the old basis or unit of land upon which to estimate the feudal dues. They tried others, as the *Pflug* and *Morgen*, but without success. Therefore the system of time and hereditary leases had to be resorted to, and this started a movement toward freer modes of land-holding, which in the end ruined many of the nobles. The cutting up of estates again became general, and this resulted in great loss of services. Fiefs in large numbers became hereditary, and were allodified. The office of *villicus* also became hereditary, and connection between the organs of control and of local administration was severed. Thus the ruin of the existing administrative system was completed. The land came to be regarded more as a source of rent than as a basis of power.

But, owing to the rapid growth of population, the peasantry were not able to seize the opportunity thus presented to them. The cities distanced them in the race and appropriated most of the economic advantages coming from this period of change. In the end, the peasantry suffered quite as much as the nobles themselves, and in the rivalry between city and country, which thus began, found themselves at a great disadvantage.

But what was the result so far as the general organization of society was concerned? It was in brief the beginning of the modern state. The great majority of the noble families sank in relative importance, but a few by skilful management rose. Their *Vögte* gradually took the place of the *villici* of the earlier period, both in spheres of economic and judicial administration. They accumulated power and territory on all sides. The *ministeriales* assumed the position of knights among the nobility of their dominions, and, with the higher clergy, took the oath of fidelity to

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the new sovereigns. In the place of the half-private, half-public relation which existed between the feudal lord and his dependant, developed the relation of ruler and subject. The introduction of money made the employment of paid officials possible. With this was connected the development of systematic administration. The old feudal imposts were unified and changed into indirect taxes, and beside these arose a system of direct taxation. The revenue thus obtained was used first of all to provide an army, and, through this, to make a foreign policy possible.

Thus during the last centuries of the middle age, the foundations of the modern territorial state were being laid, and society was assuming forms adapted to the new conditions. Lamprecht does not follow the process through to the end, because it was not completed till the absolute monarchy reached its maturity in the sixteenth century. But he shows how the corporate institutions of the closing period fell away, and in their place arose a state which for the first time was itself able to care for the common weal. And there was need enough of its activity, for at the close of the middle age came a fall in the price of corn — probably the result of overproduction. The peasants were unable to bear up against this because they were already so heavily burdened by rents and taxes. The result was the formation of an agricultural proletariat and peasant uprisings during the fifteenth and sixteenth century. The state was as yet too imperfectly developed to render efficient aid, and therefore the German peasant emerged from the middle age much worse off than he had been at any earlier period.

Such, briefly stated, is Lamprecht's account of the early economic development of Germany. Two thoughts are constantly forced on the mind by the perusal of this work. One is the complicated nature of social phenomena and the slow processes of change. The other is the close connection existing between economic changes on the one hand and legal and political reforms on the other.

HERBERT L. OSGOOD.

The Early History of the English Woollen Industry. By W. J. ASHLEY, M.A., Fellow of Lincoln College, Lecturer in Lincoln and Corpus Christi Colleges, Oxford. American Economic Association: Vol. II, No. 4, 1887. — 8vo, 85 pp.

It is a remarkable evidence of the hold which recent economic tendencies in America have acquired in all Anglo-Saxon countries, that an English scholar should be led to publish his investigations on a strictly English topic under the auspices of an American association. England, which was formerly the great home of economic science, has, during the last few decades, almost entirely lost its proud pre-eminence. But

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of late there has been growing up a body of younger men thoroughly imbued with the spirit of the new school, and there is very little doubt but that before long England will regain an important place in the development of the science. At present, however, the English economists have neither an organization nor an organ. It is owing to this fact that the American Economic association has obtained a number of members in England, and has begun to publish contributions from English economists.

It is further significant of the newer tendencies that Mr. Ashley originally started out as an historian, and won his spurs by his excellent investigation on *James and Philip van Artevelde*. In the present monograph on the woollen industry, Mr. Ashley displays the same evidence of careful research and historical training. The investigations are invariably made at first hand, and from the original documents themselves. Historical research, especially of an economic nature, has hitherto been attended with great difficulties in England. Not only has the field been very little explored, but the original documents themselves have been almost inaccessible. Thanks to the publications of the rolls commission, of the historical manuscripts commission, and of the various municipalities themselves, the reprints of the original papers are now being annually increased in number, so that we may soon hope for a fairly complete collection. Mr. Ashley has made good use of the documents already published, as well as of the scattered tracts on wool in which the later middle ages abound. The result is an eminently clear and judicious presentation of one phase of the early industrial development of England.

Mr. Ashley traces the history of the weavers in the guild system, and shows what an important rôle the woollen industry played, especially after the immigration of clothmakers under Edward III. Up to the end of the fourteenth century the guilds occupied a commanding place in industrial life. About that time the rise of a trading class proper — the drapers — may be observed, who soon obtained important rights of supervision. In the fifteenth century the whole guild system was fast decaying, and was being replaced by the domestic system, which again in the eighteenth century gave way to the factory system. This progressive change is more or less true of the other industries. Mr. Ashley confines himself principally to the earlier stages, but the short limits of the essay permit him to give only a very general sketch of the developments even in these earlier stages.

One characteristic feature of the monograph is that it does not attempt to explain too much. The almost unexplored field of English economic history is full of disputed questions, and Mr. Ashley wisely refrains from endeavoring to answer them all. At the same time one is

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inclined to feel disappointed that some important problems remain unsolved. Thus no attempt is made to explain the origin of the guild system. Perhaps the simple disregard of the Roman and manorial hypotheses implies that Mr. Ashley attaches very little credit to them. Reference is made to Brentano's exaggerations, and these references indicate that English scholars are only now beginning to free themselves from the domination of Brentano's uncritical history. On the other hand, Mr. Ashley seems to go too far in saying that at first the craftsmen were kept outside the pale of citizenship, and formed an oppressed class, subject to the will of the burghers. The weavers and fullers, indeed, were at first non-citizens, but it is very questionable, to say the least, whether this was the universal rule. In my late monograph on the mediæval guilds of England, some evidence is given tending to show that the weavers occupied an exceptional position in this respect, and that the antagonism between the craft-guilds and municipalities never attained any such dimensions as on the continent. Mr. Ashley confines himself, indeed, to the weavers; but it would seem that his generalization on page 18 is as yet unwarranted. His theory may be the correct one, but it cannot be accepted without further proof.

The account of the origin of the drapers is more cautious. Some interesting evidence is adduced to prove their connection with the cloth finishers, but no attempt is made to decide the question. Again, the general rise of the clothiers in the fifteenth century is difficult to trace, because of the lack of adequate material, but here as elsewhere the monograph abounds in ingenious conjectures, fortified by well chosen and carefully sifted references.

The essay thus leaves many questions unanswered, but it is worthy of notice in that it puts many new questions. To state a new question correctly is often almost as important as to answer a question, and Mr. Ashley by tracing in broad outlines the general development of the woollen industry has given many fresh points of view. The tone is scholarly throughout. Mr. Ashley rescues British science from the reproach that English economic history has been investigated, with the exception of Cunningham and Rogers, only by German savants like Schanz, Held, and Ochenkowski. We sincerely trust that he will extend his investigations still further, until he gives us for England a work comparable to Schmoller's *Strassburger Tucher- und Weberzunft*. That he is fully competent to do this can be doubted by no one who reads the monograph.

A large number of misprints mar the effect of the essay. But we refrain from calling attention to them, as a list of *errata* has been printed, which may be procured from the secretary of the association.

EDWIN R. A. SELIGMAN.

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Life of Adam Smith. By R. B. HALDANE, M.P. London, Walker and Scott, 1887.—12mo, ix, 116, x, pp.

This volume has been contributed by Mr. Haldane to the series of *Great Writers* edited by Professor Robertson. Its aim is therefore primarily literary, and it is presumably not intended for students of economics. At all events it is a mere sketch, containing no new material, and giving only a synopsis of Smith's economic opinions, which will be of no interest except to the general reader. The sole reason the book is mentioned in this place is to call the attention of students to the bibliography, prepared by Mr. John P. Anderson of the British Museum, and appended to Mr. Haldane's volume. The bibliography not only contains full titles and information as to thirty-three different editions of the *Wealth of Nations*, but also gives for the first time an exceedingly serviceable list of the books and criticisms on Smith's great work. This list contains one hundred and three titles, exclusive of magazine articles, and comprehends all the principal books in English, French, German, Italian, and Russian. I have been able to discover no omissions of importance, except the works of Held, Studnitz, Helferich, Delatour, and Janzhul. The bibliography will be found very convenient.

E. R. A. S.

Letters of David Ricardo to Thomas Robert Malthus, 1810–1823. Edited by JAMES BONAR, LL.D. Oxford and London, Henry Frowde, 1887.—8vo, xxiv, 251 pp.

It is not given to every thinker to become his own commentator more than half a century after his death, and at the moment when his views must be re-affirmed and re-interpreted or suffer permanent eclipse. This unusual fate has overtaken that remarkable man who gave to political economy one-half of its scientific method, and whose *Principles* are the institutes by which degrees of orthodoxy in the science are measured. Mr. Bonar, whose excellent book on *Malthus and his Work* did good service in recalling attention to the historical connection between recent developments of economic thought and the labors of Malthus, has put students under further and very great obligations in the present work. The letters are printed from the original manuscripts in the possession of Colonel Malthus, C.B. They cover the whole period of the friendship of Ricardo and Malthus. It is greatly to be regretted that the letters from Malthus to Ricardo were probably destroyed, for, as Mr. Bonar very truly observes, not only must we decline to believe that we have the whole case before us when we are within hearing of only one

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of the disputants, but in this particular case, though Ricardo had every desire to be just to his opponent, "his cast of mind was so different that he can hardly be thought to have entered into his opponent's views with perfect sympathy."

Mr. Bonar has edited the collection with scrupulous care, and added a wealth of notes and references that will be extremely helpful to the reader who desires to follow out with some minuteness the early development of English economic thought. The preface contains a judicious estimate of Ricardo's intellectual qualities, and points out how different were the premises of all his political and economic reasonings from those that economists start from to-day. This is followed by an "outline of subjects," which enables the reader to discover at a glance what topics are discussed in the letters, or what letters deal with the particular subject he may be following, and to learn without waste of time the drift of the argument.

The letters are devoted chiefly to economic discussion, though there are frequent allusions to public affairs and the political reforms in which Ricardo was deeply interested. In many of them we catch momentary glimpses of his domestic life, and there is now and then a pleasing disclosure — wholly devoid of self-consciousness — of his amiable disposition and simple manliness. There is no such wealth of incident, no such complete self-revelation, and therefore no such biographical interest as we find in the letters and diaries of Professor Jevons, but there is enough to fully verify the impressions formed of Ricardo by his contemporaries and to bear out the portrait of him drawn by McCulloch, as an affectionate and zealous friend, a man ever open to conviction, loving truth for its own sake, and one than whom "no man was ever more thoroughly free from every species of artifice and pretension; more sincere, plain, and unassuming." He thoroughly detested London and all its ways, and lost no opportunity to spend a few days at his quiet country seat, Gatcomb Park, where he loved to entertain his friends — and Malthus best of all. The friendship of the two men was grounded in the most genuine respect for each other's character and abilities. Each was the other's best, and it may be added, most unsparing critic, and their constant interchange of opinions was the stimulus that spurred each to the performance of much of his best work. Ricardo's views are invariably expressed in terms of stately courtesy, but they are defended, and those of Malthus are assailed, with a vigor that leaves nothing to be desired.

The publication of these letters could hardly have been more opportune. For twenty years the drift of opinion has set more and more strongly away from the Calvinism of Ricardo, and toward the Arminianism of Malthus, to quote the figure used by Mr. Bonar in his former

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work. The "hegemony of the school" (of Adam Smith) which was the prize for which Ricardo and Malthus contended, and which was won by Ricardo, has passed over, not to Malthus, indeed, but to those who have followed out his inductive methods and practical bent. Very recently there have been some signs of a partial reaction, not only toward the re-employment of Ricardo's method as a necessary part of a scientifically complete method, but toward the reassertion of principles that, after all allowances have been made, remain essentially Ricardian doctrines. His method, of isolating in thought an assumed cause of economic phenomena and following it out into ever multiplying effects, is often brilliantly illustrated in the discussions before us. Malthus reversed the process. Starting from the concrete phenomenon, he sought to discover and describe all the factors entering into it, and to determine their relations to one another. As for substance of doctrine, the conviction that these letters strengthen is, that the theory of value in its relation to utility on the one side, and to labor on the other, has not yet reached its final statement. Notwithstanding the modification and re-interpretation of the Ricardian theory begun by John Stuart Mill, and acutely continued by Cairnes and Sidgwick, there remains a gap, of which the reader of these letters is sharply conscious, between that theory and the doctrines of Jevons, Menger and Böhm Bawerk, which Mr. Bonar accepts as constituting a theory of value "that will embrace all cases of it"; and a gap not to be annihilated by describing Ricardo, in the words of Professor Jevons, as an "able but wrong-headed man." This consciousness of a hiatus in our systematic economics is awakened or confirmed more by these letters than it could be by a reperusal of the *Principles*, because here we see Ricardo, hard pressed by his opponent, recognizing the "residual phenomena" that would not come within his formulas, while, at the same time, he never for a moment lets go his conviction that they are essentially true. For the student who will patiently go over the whole ground of Ricardian economics, comparing it point by point with the economics of the school of Jevons, there is work to do that will not be barren of results.

To take up singly the questions fought over in these letters is impracticable in a brief review. Ricardo's letters in the *Morning Chronicle*, afterwards reprinted in the pamphlet on *The High Price of Gold Bullion*, led to the acquaintance with Malthus, and letters 1 to 14 discuss at some length the influence of the depreciation of the currency on the foreign exchanges. Ricardo maintains against Malthus, among other positions, one that is now admitted to be fundamental in a sound theory of money, namely, that the amount of the currency of a nation is determined for it not simply by its size and population but by the nature and extent of its trading transactions, and

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one that subsequent economic history has fully verified, to wit, that an increase of wealth is not necessarily accompanied by an increased rate of profits. Letters 78 to 88 discuss the measure of value. Overproduction is the chief subject in seven letters and the discussion of rent, wages and profits runs through the entire collection. A great deal of it is tiresome. Not a little of it is a dreary logomachy consequent upon Ricardo's failure to think out his results to the logical end and into some consistency with one another. If any doubt remained that Ricardo was not that remorselessly logical and self-consistent thinker that the socialists would have us believe, it would be effectually dispelled by the present work. Still, there runs through the whole discussion one affirmation with which everything that is permanent in Ricardo's economics can probably be reconciled. This is the proposition, stoutly defended in case after case where Malthus seems to have questioned its validity, that the only cause of permanently high or low profits, or of permanently high or low wages, in short the only *vera causa* of economic phenomena in general, is the facility of procuring necessaries, of which food may be taken as the type. Now in this affirmation we may fix attention on the labor involved in producing necessaries, or on the amount of necessaries that labor produces. The one course will give us a term that is incommensurate with any utility, and bears no fixed relation to economic facts. We shall conceive of "amount of labor" as being duration of labor multiplied by its intensity in the sense of fatigue, the wear and tear of muscles and nerves. Of "amount of labor" in this sense there is no measure whatever. The other course gives us a term that is commensurate with all utilities and that does have a fixed relation to economic facts of every kind. In this case we conceive of "amount of labor" as being duration of labor multiplied by its intensity in the sense of efficiency. "Amount of labor" in his sense is measurable, but the sole measure is product. This distinction Ricardo failed to make and his confusion of thought was therefore inevitable, for to say that value is measured by "amount of labor" may be entirely true or entirely false according to what is meant. The reduction to absurdity of one meaning is the preposterous first chapter of the *Capital* of Karl Marx, and it is not strange that Cairnes and Sidgwick have failed to make anything of it. The other meaning affords the proposition that the whole range of values is determined and measured by the produce of labor at the margin of cultivation. It was this proposition, really, that Ricardo was defending in all that he wrote. It is the central doctrine of Ricardianism, with which the later theories of value should be and can be brought into logical relation, although, as has been said, there remain gaps to be filled by further analysis.

As a whole these letters deepen the sense of indebtedness to Ricardo,

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not only for his positive contributions to economic theory, but not less for his example of the spirit in which scientific research and discussion should be conducted. His last letter to Malthus, written but twelve days before his untimely death, closes with words that beautifully reveal the scientific and moral temper of the man: "And now, my dear Malthus, I have done. Like other disputants, after much discussion we each retain our own opinions. These discussions, however, never influence our friendship; I should not like you more than I do if you agreed in opinion with me."

F. H. GIDDINGS.

The Life and Work of the Seventh Earl of Shaftesbury, K.G. By EDWIN HODDER. Popular edition, with eight full-page illustrations. Cassell & Company, 1887. — 792 pp.

These memoirs of Lord Shaftesbury, largely composed of selections from the diaries in which he had "unconsciously written his own life," form, in effect, nearly an autobiography of the eminent philanthropist. The account of his work and its relation to his times is set forth from his own point of view, and with full confidence to the reader of his thoughts and feelings about the plans and measures which absorbed his own energies and sympathies. Thus much light, not indeed of the cool and dry kind, is cast upon the inner history of the social reforms to which his life was given, and especially that of the factory legislation with which his name and fame are justly identified.

While Lord Shaftesbury was alive to every movement affecting the welfare of the masses in his time, he early in his public life "took a retainer," so to say, in behalf of the women and young children whose condition in mines and factories presented them in the light of victims rather than beneficiaries of the new prosperity of England. To remedy that condition by appropriate legislation was quite the one idea of his public life, till such legislation was secured and perfected.

Only a man of one idea, it would seem, could have thus persuaded England to give adequate consideration to the condition and needs of her factory workers. Issues of far more obvious and urgent importance absorbed public attention and the time of Parliament. The great industrial inventions effected in the eighteenth century had resulted in transforming England from an essentially agricultural to an essentially manufacturing country, in changing the distribution of population and displacing handicrafts by the factory system. The England of the nineteenth century was to be adjusted to these new conditions. Parliamentary reform, the repeal of the corn laws, the most serious political questions, engaged and agitated the public mind. The drift of political

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and economic thinking was all counter to any measures in restriction of free contract. The repeal of all statutes against combinations of workingmen and, later, the repeal of the restrictions upon trade embodied in the corn laws, marked the triumph of the philosophy of individualism and non-interference.

To the "influence, character, and perseverance of one man, — Lord Shaftesbury," it was mainly due that under such adverse circumstances the factory legislation movement was pushed forward to ultimate success. The legislation secured, important in itself, had a significance however not contemplated by its chief promoter, as a great step counter to a prevailing tendency, and as furnishing later a precedent for further increase in governmental functions and powers in Great Britain. There was little or none of the doctrinaire, political or other, in Lord Shaftesbury's composition; nor does he seem to have concerned himself much about the theoretical aspects of the measures he advocated. It is true, to be sure, that while as to national education, and all questions involving the elevation of the masses, his views were progressive and liberal, the great philanthropist was in some respects in sympathy with the spirit and traditions of a "mitigated feudalism," rather than that of the new civilization of the cotton mills and the railroads. But this mainly as the conditions of human life in old rural England seemed to him more worthy and hopeful than in the new manufacturing centres.

The "restless and sensitive compassion," which has been remarked upon as a characteristic of our century, was developed to a rare degree in Lord Shaftesbury. Contrasting the condition of the little children in factories, the women crawling under ground in mines, with that of the prosperous British public, he felt that the new industrial civilization was thus far being purchased at the price of a "new barbarism" attending it. Looking further, he saw how the natural operation of interest in reducing expense for labor, in order to compete to the best advantage, forced into employment and worked to their utmost those whose age or sex naturally unfitted them for such toil.

It was the continued presentation of facts verified by close and extensive personal observation, bringing out to view hidden or ignored evils connected with the unrestricted employment of women and children, which at last secured the interference of a Parliament often indifferent to or again impatient of the topic. The Manchester school generally saw nothing but injury to trade and reduction of wages in the proposed interferences; Mr. Cobden's genuine philanthropy aimed to benefit the workingman only by the untaxed loaf and the increase of employment to be provided by means of free-trade. Yet Lord Shaftesbury acknowledged that the free-trade had by reaction helped the factory-law movement in 1847, where the majority for his measure "were governed

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not by love to the cause, but by anger toward Peel and the anti-corn-law league."

While presenting facts and detailed instances in such a way as to appeal strongly to the sympathies of Parliament and of England, Lord Shaftesbury did not fail to see and point out some of the less obvious bearings of these facts upon the future welfare of society. His investigations in the manufacturing districts showed him clearly that, while the majority of employers were disposed to treat their work-people considerately if they could, the pace was necessarily set for all by the more unscrupulous and selfish. And he seems to have grasped in an instinctive way the principle, only of late theoretically enunciated, that the state may be called upon to interfere in order to raise the plane upon which competition may take place. It appeared to him, moreover, in the light of a departure from the order of nature that males should be ejected from the workshops and their places filled by women. With his love and admiration of old English rural life in its better aspects, we can easily understand how it was to him one of the worst features of the factory system that domestic teaching and other duties of the wife are by it supplanted, involving the destruction of the "better part of the old English character." He saw the breach widening between "the classes and the masses," and invoked legislation in the matter if only in the interest of a better feeling between the laboring people and those who had been considered in England as their natural leaders.

Lord Shaftesbury's work in connection with English factory legislation, stands in evidence that ethical and humane sentiment may bear usefully upon economic questions involving the employment of human energies. While his conceptions of the duty of society to the weaker parts in the new industrial system came through the heart rather than the head, yet, suggested as they were by careful observation and qualified by a conservative training and good practical sense, these conceptions have, as the event shows, guided legislation wisely, though not in conformity with certain then generally accepted deductions of logical political economy.

The wisdom of Kant's maxim: "Treat humanity as an end always, never as a means only," is justified economically by England's experience in legislating for her factory workers. The ruin of her manufactures, so freely prognosticated as the result of taking away "the last half-hour," has not come to pass; the reduction in the number of hours' work has been followed by a great increase in productive power, decrease in cost of production, and rise of wages. While these results are due to a co-operation of causes, the improvement of the workers' power has doubtless had its effect; and the effect upon trade of the laborer's increased capacity as a consumer of products may not yet have been adequately considered.

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The whole story of Lord Shaftesbury is a noble and useful example of a life and statesmanship trusting to and working through the moral forces; and as calculated to enlarge the usefulness of the biography, this new edition, the cheapest in market, is well-timed.

GEO. B. NEWCOMB.

Industrial Peace. A Report of an Inquiry made for the Toynbee Trustees, by L. L. F. R. PRICE, with a preface by Prof. ALFRED MARSHALL. MacMillan & Co., London and New York, 1887.—xxxi, 127 pp.

Arnold Toynbee was a lecturer on economics at Oxford. His career was cut short by death, but it lasted long enough to exhibit a rare combination of scholarship and missionary zeal. He was not only a disciple of the historical and social school of economics, but took an active interest in philanthropic work among the artisans of the English cities. A fund was established by his friends, the proceeds of which are to be used for the publication of monographs and the institution of lecture courses on various aspects of the social question in England. The work before us is the first issued by the trustees, and it shows contemporary English economics at their best.

Mr. Price has studied the problem of arbitration and industrial conciliation chiefly as it has been worked out in the iron and coal industries of Northumberland. He fully acknowledges the services which trades unions have rendered the laborers, and holds the opinion that it would be better if they were more widely extended and more thoroughly organized. He says that "the growth of organization is almost co-incident with increasing willingness to listen to reasonable argument." The larger trades unions in the long run bring the best men to the front. Also, when trade disputes occur, it is much easier to effect a settlement with a few representatives of a union, than with "a large body of men of conflicting views." Therefore, although trades unions make strikes possible, they none the less make conciliation possible.

The author, in tracing the development of schemes of arbitration, distinguishes three stages:

> One, where there is no organized machinery for the settlement of disputes, but merely occasional and irregular negotiation; another, where there is an organized machinery, but wages are settled periodically by definite arrangement; and a third, where wages are regulated automatically by a sliding scale.

The first — which by the way represents the condition of things in the United States — he examines very briefly. It is a condition as crude and unsatisfactory as were the foreign relations of states before the development of international law. Under it strikes are of frequent occur-

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rence, are long continued, and result in the greatest possible loss to both sides.

As is well known, the second stage in the growth of arbitration in England was inaugurated in the iron trade about twenty years ago by Mr. Mundella and Sir Rupert Kettle. Mr. Price gives an exhaustive analysis of the work of boards of arbitration between 1877 and 1885. His book therefore forms a valuable continuation of the earlier treatise of Mr. Crompton. He furnishes abundant evidence of the intelligence and good temper shown by the representatives of the unions in the discussions held before the boards. They are not excelled by the employers. Confidence in each other's honesty and good intentions has increased upon both sides. The resort to argument tends to banish contentiousness and to strengthen the spirit of conciliation. This is a most encouraging result, a preparatory step without which all social panaceas will be unavailing. But it is not necessary to rely wholly upon arbitration for the settlement of disputes. It is possible to adopt a certain selling price of the product and a certain wage for each variety of work in a mine or manufactory as a standard, and to agree that a specific increase or decrease of price shall be followed by a proportional rise or fall of wages. The standards may be changed from time to time as circumstances demand. This is the system of sliding scales or automatic adjustment of wages to prices. Mr. Price gives an account of its trial in the Northumberland and Durham coal trade, and examines the difficulties attending its use. He admits that the rules governing such adjustments must be sought outside the domain of pure economics, and that the application of the system would be more difficult in those branches of industry where raw materials constitute an important element in the cost of production. But he believes that the best results would follow from its wide adoption and use.

The book closes with an interesting chapter on the migration of English workingmen from one locality to another and from one trade to another. This leads the author to the conclusion that, although there are important hindrances to the mobility of labor, yet the hypothesis of free competition between all is better for practical use than the arbitrary scheme of four competitive groups brought forward by Cairnes. He holds that, in English industrial society, the only important line of demarcation is that between the classes of skilled and unskilled labor.

One of the best features both of the essay by Mr. Price and of the introduction by Professor Marshall is the frank admission of the need of social reforms, while it is also held that the methods employed "must be manifold and not single, must exhibit diversity and not uniformity of detail, must admit, in short, of application to the varying circumstances of different industries." H. L. Osgood.

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Economic Aspects of State Socialism. By HUBERT LLEWELLYN SMITH, scholar of Corpus Christi College. Oxford, 1887. — 12mo, viii, 120 pp.

The Claims of Labor. A course of Lectures on various aspects of the Labor Problem. By JOHN BURNETT, BENJAMIN JONES, PATRICK GEDDES, ALFRED RUSSELL WALLACE, WILLIAM MORRIS, and HERBERT SOMERTON FOXWELL. Edinburgh, 1886. — 12mo, 275 pp.

It is a significant evidence of the trend of scientific thought in England that the Cobden essay prize should have been awarded to Mr. Smith's little work on *Economic Aspects of State Socialism.* Not that the book discloses a peculiarly original mind, or that it contains any noteworthy contribution to the body of the science. But the views presented are such as would make Cobden turn in his grave. The great apostle of the Manchester school would assuredly have been the last one to award a prize for such heretical doctrines.

In a short historical sketch, Mr. Smith traces the development of economic thought from the mediæval system, through the industrial revolution, down to the optimistic reaction of the middle of this century. It is interesting to notice that almost for the first time in any English book attention is called to Richard Jones's contemporary criticisms of the Ricardian economics. The historical sketch is followed by an examination of the theories of state intervention. Scientific *laissez faire* is absolutely discarded. The element of monopoly as a normal factor in free industry is shown to justify state interference in certain cases; but the analysis is not in any respect so fresh or suggestive as that lately made by Professor H. C. Adams. Mr. Smith concludes that the most economic distribution of wealth is promoted by any change which tends to break down monopolies, and by combinations which serve to place the laborer on an equal footing with his employer. In discussing the influence of the law of population on socialism, Mr. Smith holds, with Jones, that the effect of a rise of wages depends largely on the *form* which it takes, and that we need not be driven to accept the gloomy forebodings of the Malthusian teachings. A rather hastily written section is devoted to the theory of government as a co-ordinating power, as expounded by List and Carey, and a somewhat ineffective reply is made to the chief tenets of scientific socialism. The discussion of the practical applications of the theory of intervention to particular cases is so brief as to be inconclusive — with the possible exception of the factory laws, whose history and justification are admirably explained. In general it may be said that Mr. Smith, like a true Englishman, is apt to take the conservative standpoint. But the whole essay, slight as it is, shows a decided break with the old ideas.

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After the expenses of the Industrial Remuneration conference of 1885 were paid, it was found that a considerable balance of the fund still remained. The trustees decided to ask some of the more prominent participants to express their views more fully, and the project resulted in the lectures which are republished in a heterogeneous volume under the title of *The Claims of Labor*. John Burnett, of the Amalgamated Society of Engineers, treats of trades unions and gives a rosy-hued account of what they have accomplished for the English laborer. He shows how little of the funds is devoted to strikes, and thinks that the future progress will lie in the direction of joint committees of masters and men, leading up to a modern type of the ancient guilds. He correctly understands that the collapse of unionism would leave no alternative to the workers but socialism. Benjamin Jones of the London Wholesale society descants on the moral aspects of co-operation, but confines himself almost exclusively to the distributive form. It appears however that co-operation is still chiefly an ideal. Patrick Geddes, known as the author of *John Ruskin, Economist*, attempts to analyze the conditions of "progress of capitalist and laborer"; but this essay belongs rather to a volume on social ethics. The poet-socialist William Morris contributes an article on the labor question from the socialistic standpoint, and speaks in his wonted poetic and indefinite way about "the necessary revolution." The only two articles really worth considering are those of Wallace, on the depression of trade, and of Professor Foxwell, on irregularity of employment and fluctuations of prices. Mr. Wallace's views are repetitions of those contained in his *Bad Times*. His very insufficient analysis finds the causes to lie in the enormous foreign loans, in the increase of speculation, and chiefly in the system of landlordism. His remedies are the repeal of the Limited Liability act and the nationalization of land. Immature views of this kind will not enhance Mr. Wallace's reputation as an economist. It is a relief to turn to Professor Foxwell's scholarly essay, which occupies about one-third of the volume. After explaining the chief evils of variable employment and the bearings of industrial fluctuations on crime and social degeneration, he puts the problem: How can greater industrial stability be secured? An interesting graphic analysis of price fluctuations leads him to describe the six constituent elements of price curves: 1. Movements due to an alteration in the standard of values. 2. Variations due to fluctuations in the quantity of credit. (These two form the general price movement.) 3 and 4. Movements originating in the general or special markets, due to dealing and speculation. 5 and 6. Special causes of price movements peculiar to each particular commodity, looked at from the standpoint of production and consumption. After treating of special remedies, such as bi-metallism *etc.*, Professor Fox-

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well concludes that future economic reform in general must proceed on the two lines of organization and publicity. Organized trade action, whether spontaneous or enforced, has already done much and is destined to accomplish far more in the path of reform. Again, the most effective method of control lies in publicity rather than in direct compulsion. Hence the value of statistics. It is interesting to notice that careful scientific analysis leads to the same conservative conclusions as the teachings of experience — of which the railway question in the United States is the best example. Mr. Foxwell's essay is a valuable bit of work and rescues the volume from the reproach of mediocrity.

E. R. A. S.

Les lois naturelles de l'économie politique. By G. DE MOLINARI, correspondent de l'Institut, rédacteur en chef du *Journal des Économistes*. Guillaumin et C^ie^, Paris. — 8vo, 329 pp.

This work contains, perhaps, a larger amount of vigorous orthodoxy than can elsewhere be found in so small a compass. It is a plea for a *laissez-faire* policy, and is full of wisdom of a kind that is needed, in view of the drift of opinions toward "stateism." Its effect on public policy will be like that of an anchor planted on a shoal on one side of a channel in order to warp a vessel off from an opposite shoal. Yet in one way it brings economics and politics into close connection; it discusses government as an economic function, a process of creating and selling the product security. Though opposing governmental interference in industry, it emphasizes the action of economic law upon government.

The natural laws that are the subject of the treatise are those of "the economy of forces, competition, and the progression of values." Impelled as man is by a desire to increase his pleasures and diminish his sacrifices, he seeks to get the largest possible product by the smallest outlay of physical and mental energy. In exchange he seeks to buy cheaply and sell dearly. In this is seen the action of the first of these three laws.

Competition arises from the scarcity of useful articles resulting from labor, and consists in the effort of rivals to get possession of these articles. The struggle appears in three forms, namely, animal, political, and industrial competition. In the first of these forms the contest ensures the survival of the highest animal type; in the second it develops the best political organization; and in the third it perfects industrial methods, and ensures to society products that are both good and cheap.

As the quantity of a particular article offered in the market is increased

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or diminished in an arithmetical ratio, the price of it falls or rises in a geometrical ratio. This is the law of the progression of values. The statement is a sweeping generalization, but serves, if true, to account for the rapid tendency toward an equality of profits in different occupations that is a marked feature of modern industry. In a subtler application, the law is made by M. de Molinari to account for the maintenance of a just equilibrium between the reward of capital and that of labor.

The origin and extension of markets is rapidly sketched in the book, as is the growth of a certain solidarity between different states, which results from international commerce. The political effects of modern industry are noted, and the doctrine is maintained that "political servitude," an institution adapted to the old régime of constant warfare, continues after its day of usefulness is past, and creates a necessary antagonism of interest between the "producers of public services" and the consumers of them. Members of the former class are interested in maintaining hostile relations toward other states, and in extending the prerogatives of their own governments; while those of the latter are interested in maintaining peace, and in diminishing governmental prerogatives. The latter policy must prevail, but only after the cost of governments shall have outgrown the tax-paying capacity of the subject classes. Markets will become world-wide, and, in the general competition that will ensue, victory will come to the peoples that are least burdened with imposts and restrictions. A small army and navy, a cheap civil service and free trade will be the keys to wealth and political preponderance. Disturbing influences springing from the imperfections of human nature will continue; but they will be more and more effectually opposed by the action of free competition "in the production of public security." Civilization is not and will not be left at the mercy of men. Natural law impels the human race toward a goal that its members do not see. In the belief that they are accelerating this progress, men more frequently retard it; and science has to limit itself to the modest and thankless task of pointing out the true way to assist the natural movement, and thus securing a certain economy of time and effort.

It is the chief merit of the work that it places in an especially clear light principles that are fundamentally sound, and that need emphasizing in view of the present drift of public thought. Its most striking defect is that it goes beyond the ordinary standard of the school that it represents in banishing ethical consideration from its scientific territory. It is phenomenally free from the suspicion of confusing morals with political economy. Its "economic man" is characterized in terms, and his actions are definitely referred to the law of "economy of forces," which is a principle of bald self-interest. Moreover, in treating of government in its economic aspect, the author is obliged to follow this

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being into a political sphere of action; and the picture that is presented of modern political life is as free from an undue admixture of ethical elements as is the picture that is drawn of industrial life. For the American reader this is most strikingly apparent in the description of the political development of the United States. Our national portrait is drawn in a manner that is grotesquely like the reality. As a caricature it is a success; and as the serious view of an eminent European publicist it contains a sharp and salutary lesson; but it is in fact a representation of what our political organism might be if it were transplanted bodily to Hades, and left unhindered to work out its evil tendencies. Yet the extension of economic principles to the governmental field is one of the valuable features of the book. It must be done consistently if at all. If one believes that a Tartarus under good police regulations offers the ideal condition for a natural economic development, there is no reason why he should set a higher ideal for governmental economics. A consistent course in this respect certainly does not place the system advocated in an attractive light; and it is quite likely to convert readers to the opposing doctrine. The work of M. de Molinari will be regarded by many adherents of the more progressive school as an argument in favor of their own views; yet it will stimulate and benefit readers of every school by the clear light in which it places the principles that are most in danger of being forgotten.

J. B. CLARK.

Das schweizerische Auswanderungswesen und die Revision und Vollziehung des Bundesgesetzes betreffend den Geschäftsbetrieb von Auswanderungsagenturen. Bericht im Auftrage des schweiz. Handels- und Landwirthschaftsdepartements erstattet von L. KARRER, Nationalrath. Staempflische Buchdruckerei in Bern, 1886. — vii, 318 pp.

This little volume has been referred to by me a number of times in my article on immigration, in another part of the present number of the POLITICAL SCIENCE QUARTERLY, and I wish to commend it especially to all who are making a serious study of the question. Not that Swiss emigration is of itself of any great importance to us, for the number that come to the United States is exceedingly small, but on account of the spirit and method of the book. It is a most exhaustive, impartial, and common-sense treatment of the whole question. There is no trace of doctrinaireism either on the side of the natural rights of the individual or on that of state authority. The author does not deny the right of expatriation, but he does assert the power of the state to regulate the going and the coming of the emigrant. In fact it is not so much a ques-

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tion of rights as it is of interests. What is the real interest of the community that gives the emigrant up, of the community that receives him, and of the emigrant himself? This can best be judged by a history of emigration, an account of the fate of the emigrants, and an examination of the way the business is carried on at the present time. Such a method of study dispels much that is rose-colored about the common view of emigration. Emigration, especially where it has been assisted by the state, has been accompanied by an enormous amount of suffering and hardship. How is it possible to take men out of a community where they are in many ways assisted and held up, and put them down on the frontier, among a strange people, on an uncultivated soil, and deprived of all the organization to which they were accustomed at home, and not have them suffer? The case becomes worse where the emigrants have been paupers and supported by the public. It is no kindness to such men to permit or to encourage their emigration. They are subjected to a struggle for existence for which they are utterly unprepared. The whole proceeding is pure selfishness on the part of the state that expatriates them, and an injury to the state that receives them, upon which fall the crime and misery that attend the work of "natural selection." The case is not much better when such emigrants are actually settled in the new country, — when land is purchased for them and they are started on their new way. They are not the stuff out of which new settlers are made.

A large portion of the book is devoted to the Swiss law of 1880 regulating emigration, to an exposition of its provisions and an account of the cases that have arisen under it. This law was intended to prevent the deportation of paupers, criminals and helpless persons, and to guard emigrants against imposition on the part of emigration agencies. It appears to be faithfully executed; but it needs all the efforts of the federal government to restrain the excessive zeal of the agents, who flood the country with glowing accounts of regions they have never seen, and literally hunt down their prey and almost compel them to go.

The author ascribes emigration to economic causes, but points out that immigration into Switzerland almost equals emigration. But while the latter is almost entirely of people engaged in agriculture, the former is of persons employed in industry. In other words, agriculture is no longer able to take up its own natural increase in population, while industry does that and something more. But the surplus Swiss in agriculture, instead of going over to industry, are sent out of the country, and foreigners are brought in; a process of substitution which is by no means to be commended. The remedy proposed by the author is technical education, so that the sons of the peasants can go into the Swiss industries where it is necessary, and the fatherland retain its own children.

RICHMOND MAYO SMITH.

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Bulletin de l'Institut International de Statistique. Tome II, Année 1887. Rome, Imprimerie Heritiers Botta, 1887.—Two parts, large 8vo, 374 and 346 pp.

The second volume of the *Bulletin* of the International Statistical institute proves of how great value the institute is going to be. The first part is devoted to the proceedings at the meeting in Rome, and the second to various papers, among which are the continuation of the elaborate statistical survey of the populations and areas of the earth by Levasseur; a short essay on the statistics of prices, by Professor Wagner; an article on Italian emigration on the basis of the Italian report of 1886; the usual bibliography of recent statistical works, *etc.*

Every one interested in statistics will turn to the proceedings at Rome with a great deal of curiosity. There was present at the meeting a very distinguished body of men. Among them were Bertillon, Bodio, Cheysson, Engel, Ferraris, Foville, Hasse, Inama-Sternegg, Juglar, Keleti, Körösi, Laspeyres, Levi, Lexis, Luzzatti, Martin, Mayr, Messedaglia, Mouat, Neumann-Spallart, Palgrave, Perozzo, Rawson, Say, and Wagner. Many of these men had taken an active part in the old statistical congresses, and the question is whether the new organization can avoid the mistakes of the old and confine itself to really scientific work. The trouble with the old congresses was that the body became too large by the admission of people who were not really statisticians but who had a popular interest in the matter. As a consequence the work of the congress generally consisted in making demands, for the mass of the members readily saw the desirability of exhaustive statistics on a great variety of subjects without knowing the practical difficulties in the way of getting them. The institute is composed largely of men engaged in statistical bureaux, and they will not be apt to err in this direction.

As was to be expected and as is desirable, the institute occupied itself largely with statistical method. The papers covered two very important points: first, as to getting and classifying the statistics themselves, whatever they may be; and second, how to make the principal statistics internationally comparable. No more competent body of men to deal with such questions could have been assembled, and the papers and ensuing discussions cover almost the entire field of statistical science and are of great value. It will be possible to mention only a few in this review.

Mr. Giffen presented a paper describing the method of the Board of Trade in collecting the statistics of wages lately ordered by Parliament. Two points are to be noticed, *viz.*, that the wages are to be obtained from employers and in great detail as to subdivision of employments, and that an attempt is to be made to classify the wage-earners propor-

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tionately to the amount of wages received. The first proposition will result in returns similar to those obtained by the Massachusetts Bureau of Labor in 1884. The second will give us new measurements of the well-being of the community such as we have never yet had.

In the committee on the statistics of prices, Mr. Giffen and M. Beaujon presented papers on the vexed question of "index numbers," both giving an account of different systems and making suggestions for improvements. The former thinks that wages of labor should be made one element in the index number, and that different articles should be weighted according to their importance in trade. The latter desires an index number for retail trade as well as wholesale, and that the composition of the number for each country should be determined by experts, according to the relative importance of different commodities in consumption. It is safe to say that we are very far from any satisfactory statistics of prices, and neither proposition does much toward solving the problem.

M. Ferraris made an important proposal: that the statistics of the movements of the precious metals should be gathered from banking-houses and transportation companies rather than at the custom-houses, and showed from examples how much more complete the former were.

Many interesting papers were read on the possibility of making the statistics of different countries comparable with each other. M. Körösi proposed a plan for using a similar classification in the statistics of population. Mr. Bateman pointed out that our statistics of imports and exports were not reliable, because the method of valuation was not the same in different countries; that the distinction between domestic exports and exports of articles of foreign manufacture could not be accurately carried out, because imported articles often entered into the manufacture of the former; and that the statistics of the country of destination were defective, because the shipper himself very often did not know the final destination of the goods. M. Luzzatti made a very valuable report from the committee on public debts. He showed that the common use of statistics of public debts for purposes of comparison was defective, because it did not observe that in some countries the unfunded as well as the funded debt was included in the statement; and that the purpose for which the debt had been contracted was often ignored, although it was an element of the greatest importance in judging of the real burden on the people. He also raised the rather novel question whether pensions ought not to be considered as a debt-charge, like the payment of interest, which they resemble in many respects; and the proposition seemed to meet with some favor.

Finally, there was a very instructive effort to bring statistics into the service of social science by determining statistically the question of the well-being of the community. Of this character were the papers by

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Engel, "Sur la consommation comme mesure du bien-être des individus, des familles et des nations"; Keleti, "Sur l'alimentation en Hongrie"; and Neumann-Spallart, "Sur la mesure des variations de l'état économique et social des peuples." These three distinguished men are working at the problem of indicating, by statistics of the production and consumption of the principal articles, the increase or decrease of comfort in different countries, or in the same country at different periods. Neumann-Spallart has even promised to give the results of his investigations in a future number of the *Bulletin*, and to illustrate by geometrical curves the rise or decline of well-being in the principal countries of the world. The discussion brought out a good many dissenting opinions as to the possibility of doing anything of the sort, but if it could be done it would be the greatest triumph that statistical science has as yet achieved. Enough has been said, however, to show how fruitful the labors of the Statistical institute promise to be. R. M. S.

Laws of the United States Governing the Granting of Army and Navy Pensions, together with the regulations relating thereto. Issued by JOHN C. BLACK, Commissioner of Pensions, Washington, 1887. — 8vo, 140 pp.

Some of the departments at Washington appear to have taken up the very sensible idea of publishing in convenient and accessible compilations the national legislation on special topics. The volume here noticed is one of these publications. The object is to save officials the labor of looking through the numerous and imperfectly indexed volumes of the statutes at large for the various acts bearing on particular subjects. The student who has occasion to investigate any question in the fields already covered by these compilations, will find his labor greatly shortened by their use, and is likely to meet with statutes which otherwise he might overlook.

Of particular value for study are the *Laws relating to Loans and the Currency, Coinage and Banking*, issued by the Treasury Department in 1886 in a volume of 459 pages. Another useful volume is *Laws relating to the Construction of Bridges over Navigable Waters of the United States*, a book of 335 pages, issued in second edition in 1887. Other recent issues are the *Immigration Laws of the United States* (state and national), and *Quarantine Laws* (state and national), both issued in 1887 by the State department.

It is pleasant to see the government at Washington, which already provides with such great liberality for the study of the natural and physical sciences, taking steps to aid research in the legal and economical sciences as well. These have heretofore received less favor.

G. H. B.

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